C O N F I D E N T I A L

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule 1550(b)), In re Tobacco Cases II	JCCP No. 4042
The People of the State of California, et al., v. Brown & Williamson Tobacco Corp., et al. (SF No. 996781), And People of the State of California, et al., v. Philip Morris Inc., et al. (LA No. BC 194217	Pages 1-154

DEPOSITION OF:

AD AMERICAS BY LEONARD JOSEPH HERNANDEZ

FRIDAY, APRIL 28, 2000

10:01 A.M.

REPORTED BY:

JARDENE L. PLATT,

RPR, CSR No. 3724

Deposition of AD AMERICAS BY LEONARD JOSEPH HERNANDEZ, taken on behalf of the Defendants at 515 South Figueroa Street, Seventh Floor, Los Angeles, California, on FRIDAY, APRIL 28, 2000, at 10:01 a.m., before JARDENE L. PLATT, RPR, CSR No. 3724.

APPEARANCES OF COUNSEL

FOR DEFENDANT LORILLARD TOBACCO COMPANY:

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FOR THE WITNESS:

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ALSO PRESENT:

MALENA BARNES

I N D E X

EXAMINATION PAGE

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LOS ANGELES, CALIFORNIA
FRIDAY, APRIL 28, 2000; 10:01 A.M.

LEONARD JOSEPH HERNANDEZ,
having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. LERNER:

Q. Please state your full name.

A. Leonard Joseph Hernandez.

Q. Mr. Hernandez, have you had your deposition taken before?

A. No.

Q. Have you had an opportunity to discuss what occurs in a deposition with your attorney?

A. Yes.

MS. BUTNICK: Objection. I mean, in general terms.

THE WITNESS: In general terms, yes.

BY MR. LERNER:

Q. Well, for the record, I will just remind you concerning certain of the rules so that we are clear on what is going to occur.

A. Sure.

Q. My name is Henry Lerner. I am an attorney with the law firm of Allen, Matkins, Leck, Gamble &

Mallory. I am here today representing Lorillard Tobacco Company and I am also appearing on behalf of certain other defendants, also tobacco companies, in two lawsuits concerning environmental tobacco smoke.

As a deponent here, you are under oath as though you -- and are giving testimony as though you were in a courtroom, the only difference being that we don't have a judge and there are certain

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rules concerning objections that we follow that are different in court.

Do you understand that your testimony is going to be transcribed by the court reporter as we speak today?

A. Yes.

Q. And do you understand that at the conclusion of the deposition the court reporter will transcribe the testimony, and it will be printed up in the form of a booklet for you to read?

A. Yes.

Q. Do you understand that you also have an opportunity to make any corrections that you desire to the transcript?

A. Yes.

Q. You also understand that in the event that you make any changes or corrections, that my client and other defendants would have an opportunity to comment on that later at trial.

A. Yes.

MS. BUTNICK: Actually, before we go on, I would like to state for the record that we would like to designate this transcript as confidential and if you want to use any of the items from it later in a nonconfidential manner, then we can discuss that. Just we are going to designate it all confidential, globally, at the outset.

MR. LERNER: Let's go off the record a moment, please.

(Discussion off the record.)

MR. LERNER: Ms. Butnick and I have, off the record, reviewed the terms of the protective order filed on this case on July 27, 1999. The document is called "Protective Order Governing the Use and Dissemination of Certain Information, Documents and Materials Produced By Certain Defendants."

We have agreed that the transcript of the deposition shall be treated as confidential in accordance with paragraphs 5 through 9 of the protective order.

Is that correct?

MS. BUTNICK: That's correct.

MR. LERNER: Thanks.

Q. Just a few other practical ground rules. When I am asking a question, you should please wait for me to answer before you respond. It's difficult for the court reporter to take down two people talking at once.

In addition, if you don't understand one of my questions, bearing in mind that I am not as familiar with the subject matter I am going to be asking you about as you are, please would you tell me that you don't understand and I will try to rephrase it.

A. (Witness nods head.)

Q. And the other ground rule is that the court reporter cannot take down a nod or a gesture.

A. Okay.

Q. So you will need to answer all the

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questions audibly.
A. Yes.
Q. Thank you.
I understand you are presently employed by Ad Americas?
A. Yes.
Q. As an account executive?
A. Yes.
Q. And you are the person who is designated as person most knowledgeable to testify in this proceeding on behalf of Ad Americas?
A. Yes.
(Deposition Exhibit 216 was marked for identification.)
BY MR. LERNER:
Q. I would like to show you a document that's been marked as Exhibit 216.

Have you seen this document before?
A. No.
Q. Have you seen a prior notice of -- any notice of deposition that called for the appearance of a person most knowledgeable to testify on behalf of Ad Americas in these cases?
A. Yes.
Q. Did the deposition notice that you saw contain a request for a person who had knowledge of the subjects described on Page 3 of Exhibit 216, that is Exhibit A?
A. Yes.
Q. Who approached you concerning testifying as a witness in this case?
A. I don't understand.
Q. Who asked you to testify as a witness on behalf of Ad Americas in this case?
A. The general manager of the agency.
Q. What is the name of the general manager of the agency?
A. Santiago Ogradon.
Q. What did he ask you with respect to the deposition subpoena?
A. I don't remember.
Q. Did you make any investigation concerning the subjects described on Exhibit A of Exhibit 216 in order to prepare to testify today?
A. I don't understand the question.

Q. What did you do to prepare to testify today?
A. I reviewed the documents that pertain to this account.
Q. Did you speak to anyone?
MS. BUTNICK: His attorney.
BY MR. LERNER:
Q. Other than your attorney?
A. The general manager of the agency.
Q. When did you speak to Mr. Ogradon concerning this deposition?
A. I don't remember.
Q. Did you ask Mr. Ogradon any questions that would enhance your knowledge concerning the subjects

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described on Exhibit A of Exhibit 216?
A. I don't understand the question.
Q. Did you learn anything from Mr. Ogradon that pertained to the accounts that you did not know in that conversation?
A. No.
Q. What did Mr. Ogradon ask you to do?
A. I don't remember.
Q. How long was the conversation you had with Mr. Ogradon at that time?
A. I don't remember. It was -- I don't remember.
Q. Approximately how long ago did you have the conversation?

A. Probably over three weeks ago.
Q. When did you begin reviewing documents to prepare for this deposition?
A. I don't remember.
Q. Approximately when?
A. Upon receipt of the subpoena.
Q. Did you ask anyone to assist you in collecting documents in response to the subpoena?
A. Can you be more specific?
Q. Did you have anyone help you collect the documents that were produced in response to the subpoena?
A. Yes. Copying.
Q. You had the assistance of copy people?
A. Pardon me?
Q. You had the assistance of people -- people helped you with the copying, is that what you are saying?
A. Yes.
Q. So you collected all the documents yourself?
A. Yes.
Q. Could you describe for me, briefly, your educational background.
A. What college did I go to or --
Q. Sure. What college did you go to?
A. Pepperdine University.
Q. Did you obtain a degree there?

A. Yes.
Q. What was your degree?
A. International economics.
Q. BA?
A. Yes.
Q. In what year did you obtain that degree?
A. 1996.
Q. After you graduated from Pepperdine, did you have any further education?
A. Yes.
Q. What was that?
A. I went to community college.
Q. What community college?
A. Pasadena.
Q. What did you study at Pasadena Community College?
A. I went -- I took a Spanish course.

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Q. What level Spanish course did you take?
A. I don't remember. I don't remember.
Q. Did you have knowledge of Spanish before --
A. Yes.
Q. -- you took the course at Pasadena Community College?
A. Yes.
Q. So what was the nature of the course?
MS. BUTNICK: Objection. That's a little vague.

THE WITNESS: Can you be more specific?
BY MR. LERNER:
Q. What was the title of the course?
A. I don't remember.
Q. What was studied in the course?
A. Spanish.
Q. Spanish language?
A. Yes.
Q. Grammar?
A. Yes.
Q. Was it an upper level Spanish course or beginning Spanish course?
A. It was an intermediate.
Q. When did you take that course?
A. 1998.
Q. Have you had any subsequent higher education -- any other subsequent higher education after you graduated from Pepperdine?
A. No.
Q. Did you receive any training in advertising or marketing while you attended Pepperdine?
A. No.
Q. Have you had any training in advertising or marketing that you received elsewhere?
A. No.
Q. What was your first job after you graduated from Pepperdine University?

A. Could you be more specific?
Q. Would you summarize your employment history for me, beginning with your first employment after you graduated from Pepperdine.
A. I was a waiter at Coogies Beach Cafe. I was employed by Moneymex U.S.A.
Q. What did you do at Moneymex U.S.A.?
A. My title was regional manager.
Q. When did you take the position at Moneymex U.S.A.? Approximately.
A. June-July of '96.
Q. What business is Moneymex U.S.A. in?
A. It no longer exists.
Q. What business was it in?
A. It was in the money transfer.
Q. How long did you work at Moneymex U.S.A.?
A. It was until February of '97.
Q. What was your next job after your employment ended at Moneymex U.S.A.?
A. Coffee Bazaar.

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Q. What did you do there?
A. I was a server.
Q. What was your next position after Coffee Bazaar?
A. Ad Americas.
Q. When did you begin your employment at Ad Americas?
A. June of '97.

Q. Your business address at Ad Americas is presently 865 South Figueroa, 12th Floor, Los Angeles 90017?
A. Yes.
Q. When you began at Ad Americas, what was your first position there?
A. Media assistant.
Q. What were your duties as a media assistant?
A. Assist media buyers and planner.
Q. Does that mean you would assist media buyers in placing advertisements in the media?
A. Can you be more specific?
Q. What were the duties of media buyers that you were assisting with?
A. Faxing media orders.
Q. What were your duties with respect to planning?
A. Assist with providing the media authorizations to the buyers.
Q. How long did you -- when did -- you began serving as media assistant in June 1997?
A. Yes.
Q. For how long did you continue in that position at Ad Americas?
A. Until August of '97.
Q. What position did you next take after you were media assistant?

A. Assistant media planner.
Q. What were your duties as an assistant media planner?
A. Assistant media director.
Q. Who was the media director at that time?
A. Raquel Tomasino.
Q. What were the media director's responsibilities that you assisted with?
A. Can you be more specific?
Q. What work did you do for Ms. Tomasino?
A. I helped her with organizing flow charts.
Q. Anything else?
A. Not that I can remember.
Q. When you say flow charts, what do you mean?
A. Media flow charts.
Q. What do media flow charts generally show?
A. The media for certain clients.
Q. The media buys or the media -- the media buys you mean?
A. No. The media planned.
Q. The media plans.
A. Planned media throughout the year.

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Q. How long did you continue as an assistant media planner to Ms. Tomasino?
A. I don't remember exactly.
Q. Well, approximately -- what was your next position after you were assistant media planner?

A. Assistant account executive.
Q. When did you begin work as an assistant account executive at Ad Americas?
A. December of '97.
Q. What were your duties initially as an assistant account executive?
A. Assist Santiago Ogradon.
Q. What were you assisting Mr. Ogradon with?
A. Coordination, account coordination pertaining to our clients, his clients.
Q. What do you mean by account coordination?
A. Correspondence, faxing correspondence, traffic instructions.
Q. So does this mean you were assisting Mr. Ogradon in servicing his accounts?
A. Servicing?
Q. Yes.
A. Yes.
Q. For how long were you an assistant account executive to Mr. Ogradon?
A. Until June '98.
Q. What were the accounts that you assisted Mr. Ogradon with? What were the names of the accounts?
A. MacFrugal's Bargains Closeouts. Culligan. McDonald's operators of Southern California. Those are the ones that I can remember.
Q. And then what was your next position at Ad

Americas after you were an assistant account executive to Mr. Ogradon?
A. Account executive.
Q. You became an account executive in June of 1998?
A. Yes.
Q. And that's still the position you -- that's a position you presently hold?
A. Yes.
Q. What are your duties as an account executive -- or what were your initial duties as an account executive beginning in June 1998?
A. Assist -- service existing clients.
Q. Which existing clients have you been responsible for servicing as an account executive at Ad Americas?
A. In June of 1998?
Q. Okay. What existing clients were you assigned to service between in June 1998?
A. McDonald's operators of Southern California. Culligan Water Systems.
Q. Were there any other that you were assigned to service at that time?
A. McDonald's operators of San Diego.
Q. Have you been assigned any other clients since June 1998?

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A. Yes.
Q. What other clients?

A. Toyota dealers of Southern California. Toyota dealers of San Diego County. California Department of Health Services Tobacco Control Section. Farmer John. Knotts Berry Farm.
Q. Any others?
A. That's it.
Q. Do any other -- are there any other account executives that work with you in servicing any of these clients?
A. Yes.
Q. What other account executives work with you in connection with the California Department of Health Services Tobacco Control Section account?
A. Can you be more specific?
Q. Well, what other account executives work with you on the clients you mentioned?
A. At Ad Americas.
Q. Yes.
A. No.
Q. Do you work with other account executives?
A. Yes.
Q. With whom -- with which other account executives do you work?
A. Can you be more specific?
Q. You said you worked with other account executives.
A. Yes.
Q. What are their names?

A. Cailin Cannon, Guillermina Carranza. That's it.
Q. And Cailin is a woman?
A. Yes.
Q. And which accounts does Cailin work on with you?
A. The California Department of Health Services.
Q. And which accounts does Guillermina work on with you?
A. California Department of Health Services.
Q. So how many account executives are presently assigned to the California Department of Health Services account?
A. At Ad Americas?
Q. Yes.
A. Just myself.
Q. What work has Cailin done as an account executive on the California Department of Health Services account?
A. She works at Asher & Partners.
Q. Does Guillermina Carranza also work at Ash & Partners?
A. No.
Q. Does she work at Ad Americas?
A. No.
Q. Where does she work?
A. At Durazzo Communications.

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Q. Who else at Ad Americas has worked on the California Department of Health Services account since you became account executive for that account?
A. Who else works on it?
Q. Yes.
A. Santiago Ogradon.
Q. Anyone else?
A. Can you be more specific?
Q. Well, is there anyone else who has helped do work for the California Department of Health Services at Ad Americas?
A. Yes.
Q. Who, other than you and Mr. Ogradon?
A. Robert Sosa.
Q. Anyone else?
A. Liz Castells-Heard.
Q. Can you spell that, please?
A. Castells, C-A-S-T-E-L-L-S, hyphen Heard, H-E-A-R-D.
Q. Anyone else?
A. Carlos Alcibar.
Q. Could you spell the last name?
A. A-L-C-I-B-A-R.
Q. Anyone else?
A. Not that I can remember.
Q. Generally what has Mr. Ogradon done with regard to the California Department of Health Services account?

A. He's my supervisor.
Q. So he supervised your work on the account?
A. Yes.
Q. What is Mr. Sosa's position?
A. Creative director.
Q. What work has Mr. Sosa done on the California Department of Health Services account?
A. Help develop creative.
Q. What is Liz Castells-Heard's position?
A. President, partner.
Q. I'm sorry?
A. President, partner.
Q. President partner?
A. And partner.
Q. What work has she done on the account?
A. Assist in the strategic direction.
Q. What is Mr. Alcibar's position?
A. Senior copy writer.
Q. What work has Mr. Alcibar done on the California Department of Health Services account?
A. Assist in writing copy.
Q. Is there anyone at Ad Americas who has worked on media buys for the California Department of Health Services?
A. Yes.
Q. Who has worked on media buys?
A. Raquel Tomasino, Marie Sahagun, Edith Rondon, Alex Fino, Leandra Olague.

Q. Could you spell the last name please?
A. O-L-A-G-U-E.

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That's all I can remember.
Q. What is Marie Sahagun's position?
A. Media buyer.
Q. What is Edith Rondon's position?
A. Media buyer.
Q. And Mr. Fino's position?
A. Formerly media supervisor.
Q. What is Leandra Olague's position?
A. Formerly media -- assistant media or media assistant.
Q. Does anyone at Ad Americas report to you?
A. No.
Q. So you report to Mr. Ogradon?
A. Yes.
Q. And Mr. Ogradon reports to whom?
A. To Liz Castells-Heard.
Q. Does Ad Americas -- can you generally describe the nature of the business of Ad Americas?
MS. BUTNICK: Objection. That question is a little vague.
THE WITNESS: Can you be more specific?
BY MR. LERNER:
Q. What is Ad Americas' business?
A. They are a Hispanic marketing and advertising agency.
Q. Do you know when Ad Americas was founded?

A. No.
Q. Approximately how many people presently work at Ad Americas?
A. Approximately 30.
Q. Does Ad Americas have any offices other than the one located at 865 South Figueroa?
A. No.
Q. When you say it's a Hispanic advertising and marketing agency, do you mean that it serves a particular market?
A. Can you be more specific?
Q. What do you mean by Hispanic advertising and marketing agency?
A. We are -- we target base -- our specialization is targeting Hispanics.
Q. Does Ad Americas work in any particular Hispanic markets in the United States? Or do you special -- let me strike that.
Does Ad Americas specialize in any particular Hispanic markets geographically?
A. Yes.
Q. What markets do you specialize in?
A. Los Angeles, San Diego, Phoenix. Those are the ones that I remember.
Q. Does Ad Americas specialize in targeting Hispanics who reside elsewhere in California?
A. Specialize as in?
Q. Has Ad Americas done work targeting

Hispanics who reside in the Bay Area, for example?
A. Yes.
Q. And how about in the Central Valley?
A. Central Valley meaning like Fresno?
Q. Yes.

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A. Yes.
Q. When you say that Ad Americas specializes in targeting Hispanics, what do we mean by "Hispanic" in this context?
A. People who -- Latin American or Spanish origin.
Q. Do we also mean people of those origins who currently speak Spanish?
A. I don't understand.
Q. Are we talking about Spanish speakers only?
A. No.
Q. So we are talking about people who are of Latin American or Spanish origin, whether or not they speak Spanish.
A. Right.
Q. Does Ad Americas do advertising and marketing in the English language as well as in the Spanish language?
A. Yes.
Q. When did you begin working on the California Department of Health Services account?
A. Can you be more specific on that?

Q. Well, when did you first hear of the California Department of Health Services account?
A. In November-December 1998.
Q. What did you hear about that account at that time?
A. That it was up for review.
Q. Were you asked to do anything concerning that review at that point?
A. Yes.
Q. Who asked you?
A. Santiago Ogradon and Liz Castells-Heard.
Q. What did they ask you to do?
A. Research.
Q. Concerning what?
A. The California Department of Health Services account.
Q. What specifically did you do by way of research concerning the California Department of Health Services account at that time?
A. I don't remember.
Q. What did they ask you to research?
A. The smoking prevalence among Hispanics within California.
Q. Did Ad Americas have any documents that pertained to that subject at the time you began your research to your knowledge?
A. I don't remember.
Q. Did you go out and locate any documents

that pertained to the smoking prevalence among Hispanics as part of your research?
A. Yes.
Q. What documents did you obtain concerning smoking prevalence among Hispanics?
A. I don't remember.
Q. Who did you contact to obtain documents?
A. Alison Melody.

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Q. Of Asher & Partners?
A. Yes.
Q. Did Ms. Melody provide you with any documents?
A. Yes.
Q. Did you contact anyone else to obtain any documents concerning smoking prevalence among Hispanics?
A. Not that I can remember.
Q. Did Ms. Melody provide you with some documents?
A. Yes.
Q. Did you obtain any documents from the California Department of Health Services?
A. Yes.
Q. Who did you contact at the California Department of Health Services to obtain such documents?
A. No one.
Q. How did you obtain documents from

California Department of Health Services?
A. The documents were sent to us.
Q. Who provided them to you?
A. I don't remember.
Q. So you were working on this project during what period of time?
A. December '98 to January 1999.
Q. Did you report on your research to Mr. Ogradon?
A. Yes.
Q. Did you write a report?
A. I don't remember.
Q. Did you prepare anything in writing that summarized your research?
A. Yes.
Q. What did you prepare that summarized your research?
A. Graphs.
Can we take a break?
Q. We certainly can.
(Recess taken.)
(Deposition Exhibit 217 was marked for identification.)
BY MR. LERNER:
Q. Mr. Hernandez, I would ask you to take a look at Exhibit 217, which is a document that we received with a production of records from Ad Americas called "Declaration of Leonard Hernandez Accompanying

Production of Business Records." Is that your signature on Page 2 of Exhibit 217?
A. Yes.
Q. The documents I am going to be showing to you today also reflect Bates numbers from the production of documents that we received from Ad Americas. Your declaration is the document that is ADA 1 to 2. And then I will be showing you other documents that we received and asking you to identify them and giving certain explanations concerning them.
Did you collect the documents that were

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produced in response to -- that are reflected -- referenced in your declaration?
A. Yes.
Q. Did you -- were these documents maintained in files that you keep?
A. Yes.
Q. Files that you keep in the ordinary course of business in order to assist you with your work?
A. Yes.
Q. Do you happen to know whether there are any records pertaining to the California Department of Health Services account which were not produced in response to this subpoena?
A. I don't understand that.
Q. When you selected documents responsive to the subpoena, I assume that there were some documents that you decided not to select.

A. I went over them with my attorney.
Q. And you decided not to select documents which did not pertain to environmental tobacco smoke.
A. Again, after meeting with my attorney.
Q. Let me ask you this question. Are there any documents that pertain to environmental tobacco smoke that were not produced by Ad Americas in response to the deposition subpoena?
A. Yes.
Q. And what is the nature of the documents pertaining to environmental tobacco smoke that were not produced?
A. Can I speak to --
Q. Absolutely. Let's go off the record.
(The witness and counsel confer.)
BY MR. LERNER:
Q. We are back on the record.
A. Yes.
Q. What is your answer?
A. Creative that has not been produced yet.
Q. And by "creative" you mean advertisements that are presently in development or production?
A. Yes.
Q. And this is creative for the California Department of Health Services?
A. Yes.
Q. Just if you could identify generally what creative we are talking about. Are these specific

advertisements that are being developed?
A. Can you be more specific?
Q. What are the documents, specifically, that have not been produced?
A. Layouts, storyboards, scripts.
Q. Anything else? Correspondence or memos?
A. Not that I can recall.
Q. Are these creative -- this is, I take it, proposed creative?
A. Yes.
Q. And not -- and does it include any creative that has been approved for production by the California Department of Health Services?
A. I'm sorry?

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Q. Does it include any creative that has been approved by the California Department of Health Services?
A. No.
Q. So these are strictly new ideas that are in development?
A. Yes.
Q. Did any of these new ideas in development pertain to -- specifically pertain to environmental tobacco smoke?
MS. BUTNICK: I should note for the record that we actually -- I have informed Brad that we weren't going to be producing those documents, the future-looking documents.

MR. LERNER: Okay. I am just going to ask generally about --
MS. BUTNICK: I want to let you know we were specifically excluding them. We already told him that we --
MR. LERNER: But I do want to determine what generally is being worked on --
MS. BUTNICK: Sure.
MR. LERNER: -- by way of creative pertaining to ETS.
MS. BUTNICK: I understand.
BY MR. LERNER:
Q. What in general terms is presently under development with respect to environmental tobacco smoke?
A. Can you --
Q. Are you developing ads that relate to the dangers of environmental tobacco smoke?
A. Yes.
Q. How many ads are you presently working on developing in that area?
A. Can you be more specific?
Q. Were you working on any print ads that pertained to ETS?
A. Yes.
Q. And how many new print ads pertaining to ETS?
A. Three-plus. They are currently in

development stage.
Q. And how many video advertisements are -- pertaining to ETS are in the development stage?
A. Video meaning like --
Q. TV.
A. Three.
Q. How many new radio ads pertaining to ETS are under development?
A. Three.
Q. How many new billboard ads pertaining to ETS are under development?
A. Two.
Q. Are all the ads pertaining to ETS that are under development at Ad Americas being developed for the Spanish language?
A. No.
Q. So some are to be developed in Spanish and

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some are being developed in English?
A. Yes.
Q. Have any of the ads under development been the subject of any discussion with the California Department of Health Services?
A. Can you be more specific?
Q. Has there been any communication with the California Department of Health Services concerning the ads, the ETS ads up in development?
A. Yes.
Q. And has the California Department of

Health Services authorized the work that is being done to develop these new ads pertaining to the environmental tobacco smoke?
A. "Authorized" meaning?
Q. Authorized the work.
A. Yes.
Q. When did the work on these new ads pertaining to ETS, that is these new ads in development, begin?
A. I cannot recall.
Q. Can you recall approximately how long this process has been going on?
A. Approximately six months.
Q. You mentioned that you learned in November or December 1998 that the California Department of Health Services account was up for review. Who at Ad Americas took the lead in trying to obtain that account?
A. Liz Castells-Heard.
Q. And who -- to whom did Ad Americas apply to obtain the account?
A. Asher & Partners.
Q. You mentioned you had some communications with Alison Melody of Asher & Partners when the account came up for review. Was there anyone else at Asher & Partners that you communicated with concerning the account at that time?
A. That I communicated with?

Q. Yes.
A. Not that I can recall.
(Deposition Exhibit 218 was marked for identification.)
BY MR. LERNER:
Q. I would like to hand you Exhibit 218 which is a document called "Youth Smoking Trends in California," which has Bates numbers ADA 3 and 4.
Is this one of the documents you obtained when you were doing your research into the prevalence of smoking among Hispanics in California?
A. Yes.
Q. Did this document come to you from the Department of Health Services?
A. I can't recall.
(Deposition Exhibit 219 was marked for identification.)
BY MR. LERNER:
Q. I would like to show you Exhibit 219, which is a five-page fax to you from Alison Melody of

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Asher & Partners, and I see that this document is dated August 16, 1999. Does that refresh your recollection as to when you began working on -- or began researching smoking prevalence among Hispanics in California?

A. I'm sorry, could you please repeat the question?

Q. Does this -- you earlier told me that you

began -- you first heard of this account in November-December 1998 and this document is dated August 16, 19 -- excuse me. Strike that.

What was the occasion for you to receive this document from Alison Melody?

A. I can't recall.

Q. Did you use this document in preparing any -- or doing any of your work on the California Department of Health Services account?

A. Yes.

Q. How did you use this document in your work on the account?

A. Marketing tactics.

Q. So you used this in developing marketing tactics for Hispanic youth smoking?

A. Yes.

Q. Specifically how did you use this in developing marketing tactics?

A. Target certain age groups.

Q. Which age groups became the target of any advertisements based on these -- on this document?

A. Teens.

Q. In any particular age range of teens?

A. No.

(Deposition Exhibit 220 was marked for identification.)

BY MR. LERNER:

Q. I would like to show you Exhibit 220 and

ask if you can identify that. Is this a document you have seen before?

A. Yes.

Q. Do you keep this document in your files?

A. Yes.

Q. When did you receive this document? Which I should state, for the record state, is a final report dated June 30, 1998 called "Tobacco Control of California: Who's Winning The War? An Evaluation of the Tobacco Control Program, 1989 to 1996. Report to the California Department of Health Services Cancer Prevention and Control Program University of California, San Diego."

So when did you obtain this document approximately?

A. Approximately December 1999.

Q. Is this one of the documents -- so this is a document that you received a year after you first did any research, when the account was up for review?

A. A year after.

Q. Is this a document that you used for your research, when the California Department of Health Services account was up for review?

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A. Yes.
Q. So you received it, then, in December 1998 approximately?
A. No. December -- I'm sorry, December of 1998, yes.

Q. Thanks. You said 1999.
A. I'm sorry. 1998.
Q. Did you read this document at the time you were doing your research?
A. I went through it.
Q. Did you draw on any information contained in this report in preparing the graphs that you mentioned earlier concerning smoking prevalence among Hispanics?
A. I believe so.
Q. When you were doing your research in December 1998, January 1999, did you review the chapter in this report that pertains to protection of nonsmokers, that is Chapter 4?
A. Yes.
Q. Did you review -- at the time you were doing the research in December of 1998 and January 1999, did you review any other materials that pertained to environmental tobacco smoke? That is other than Chapter 4 of Exhibit 220.
A. Yes.
Q. What was that?
A. I can't recall it.
Q. You mentioned that your work concerning smoking prevalence was put into the form of some graphs.
A. Um-hum.
Q. Did you do a narrative report of any kind

at that time that summarized your research?
A. I can't recall.
Q. Did your research include any investigation as to the levels of awareness of Hispanics in California concerning any dangers of environmental tobacco smoke?
A. I'm sorry --
Q. Did your research, initial research in December 1998 and January 1999 include any work on the levels of public awareness among Hispanics concerning the dangers of smoking?
A. Yes.
Q. Did the research also include any research concerning the levels of awareness among Hispanics concerning the dangers of secondhand smoke?
A. Yes.
Q. So what did you do, specifically, to investigate the levels of awareness among the Hispanic people in California of the dangers of secondhand smoke?
A. Reviewed current publications.
Q. What do you mean by current publications?
A. I -- just the current -- the current newspaper or materials that Alison Melody provided.
Q. Do you have copies of these materials in your files?

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A. Yes.
Q. Did you produce those materials as part --

A. Yes.
Q. -- of this production?
A. Yes.
Q. Can you specifically recall what these documents were?
A. No.
Q. Was Exhibit 218 one of the documents that was provided to you by Alison Melody at that time?
A. Yes. I believe so.
Q. Did Alison Melody also provide you with Exhibit 220 at that time?
A. I can't recall.
Q. What do you recall these documents show concerning the levels of awareness of Hispanics in California concerning the dangers of secondhand smoke?
A. I believe that there was a low awareness of the harms of secondhand smoke.
Q. Do you recall which documents led you to that or said that?
A. No. I can't recall.
I would like to take a break.
Q. Sure.
(Recess taken.)
MR. LERNER: Could you just read the last couple questions and answers back for me, please.
(The record was read as follows:
"Q. What do you recall these documents show concerning the levels of

awareness of Hispanics in California concerning the dangers of secondhand smoke?
"A. I believe that there was a low awareness of the harms of secondhand smoke.
"Q. Do you recall which documents led you to that or said that?
"A. No. I can't recall.")
BY MR. LERNER:
Q. Do you recall whether your research showed that there was any awareness that secondhand smoke was dangerous among the Hispanic population in California at that time?
A. That it was dangerous?
Q. Yes.
A. Yes.
Q. What specifically did the documents show concerning the levels of awareness that secondhand smoke was dangerous in general?
A. I don't understand.
Q. Well, did the documents you reviewed contain survey data?
A. I believe so.
Q. Are you saying that your understanding at the time was that Hispanics did not know that secondhand smoke could be dangerous?
A. That it was -- that they -- there was a

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low awareness of the dangers.
Q. When you say "low awareness of the dangers", do you mean low awareness of specific dangers?
A. No. Just low awareness of the dangers in general.
Q. Who provided you with the document that led you to the belief they showed there was a low awareness of the dangers of secondhand smoke among the Hispanic population in California?
A. I can't recall exactly.
Q. Were they provided to you by Asher & Partners?
A. I believe some of the documents were.
Q. Were they provided to you by the California Department of Health Services?
A. I believe so.
Q. Were they provided to you by anyone other than Asher & Partners and the California Department of Health Services?
A. Not that I can recall.
Q. Did you obtain documents from any sources other than Asher & Partners and the California Department of Health Services in doing your research?
A. Yes.
Q. Who else provided you with documents for your research?
A. I can't recall exactly who.

Q. Did you go to the library and obtain any documents?
A. Yes.
Q. What library did you use?
A. I can't recall exactly which library.
Q. Did you do any research on the Internet?
A. No.
Q. Did you obtain any documents from any private organizations? Such as the American Cancer Society or the American Lung Association.
A. I did not.
Q. Are you familiar with a report that was prepared by the Environmental Protection Agency concerning environmental tobacco smoke?
A. I am not familiar with the report.
Q. Did you find any information in Exhibit 220, that is the final report, dated June 30, 1998 concerning the prevalence of smoking among Hispanics? Strike that. Let me ask you a more specific question.
Did you find anything in Exhibit 220 concerning awareness among Hispanics of the dangers of secondhand smoke?
A. I can't recall exactly.
(Deposition Exhibit 221 was marked for identification.)
BY MR. LERNER:
Q. I show you Exhibit 221, which is a document called "Internal Summary Report #1" dated

January 28, 1999. Have you seen this document before?
A. I believe so.

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Q. Is this a document that you prepared?
A. I can't recall.
Q. Is this document a report of a meeting among the representatives of the California Department of Health Services, Asher & Partners and Ad Americas?
A. Yes.
Q. You were one of the persons who attended the meeting?
A. I -- yes.
Q. The meeting took place on what date?
A. January 28, 1999.
Q. Under the heading "discussion" there is a sentence that reads:
"Client expressed appreciation for the effort that went into agency presentation and particular the thorough research analysis."
Now, did you do any work on the research analysis that was presented at that meeting?
A. Yes.
Q. Did you present the research analysis?
A. I believe so. Yes.
Q. Did your presentation include any information concerning environmental tobacco smoke?
A. Did it pertain to --
Q. Did your presentation pertain at all to

environmental tobacco smoke?
A. Yes.
Q. What, specifically, did you present at that meeting that pertained to ETS?
A. I can't recall exactly.
Q. Did you have notes of what you presented at that meeting?
A. No.
Q. Did you prepare a document that reflected your research that was presented at the meeting?
A. Did we prepare the document?
Q. Did you have a document that contained your research for the client at that meeting?
A. Yes.
Q. What was the document that you had that contained your research?
A. It was -- I don't remember exactly the title of it. I think it was a presentation.
Q. What was the approximate title of the document, if you can't remember exactly?
A. I believe it was Ad Americas presentation to California Department of Health Services.
Q. Did you produce that document as part of the -- in response to the subpoena?
A. Yes.
Q. How long was that document?
A. I don't remember exactly how many slides, but --

Q. So it was a PowerPoint-type presentation?
A. Yes.
Q. Did the presentation include any materials other than the slides? That is any written materials.
A. Other than handouts, no.

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Q. What were -- what was the title of the handouts?
A. They were copies of the presentation.
MR. LERNER: Let's go off the record a second.
(Discussion off the record.)
MR. LERNER: We will mark this document Exhibit 222.
(Deposition Exhibit 22 was marked for identification.)
MR. LERNER: And let's make this one 223.
(Deposition Exhibit 223 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 222 is a document called "Anti-Smoking Hispanic Media Plan."
Can you identify this document, please.
A. I'm sorry, can I identify it, meaning? Yeah. This is a document that is part of a presentation.
Q. This was -- did you prepare this document?
A. I assisted.
Q. Does this document contain the slides that were presented at the January 28, 1999 meeting with --

that we were discussing earlier?
A. Yes.
Q. This document is dated March 10, 1999. Does it reflect -- are there any changes that are reflected in this document from what was shown at the January 28th meeting?
A. Not that I can recall. Not that I can recall.
Q. Is there any portion of this document that reflects the research you presented with regard to environmental tobacco smoke at the January 28, 1999 meeting?
Let me direct your attention specifically to the page marked ADA 1254 which is titled "Today's Smoking Attitude."
A. Um-hum.
Q. Did you prepare this page of the document?
A. I can't recall.
Q. Well, the first -- under the first -- at the top of the page the document reads:
"There have been some positive shifts in adult attitudes. Protection from SHS at home for children has risen to 90 percent."
Does SHS, in that second sentence, refer to secondhand smoke?
A. Yes.
Q. So what did you -- what was meant by this

sentence, protection from SHS at home for children has risen to 90 percent?
A. I believe that it's because of -- that among -- among Hispanics that's about -- protection has increased in homes.
Q. So does this -- I mean, if I -- would it be fair to interpret this to mean in 90 percent of Hispanic homes there is an effort made to protect

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children from secondhand smoke?
A. Approximately, yes.
Q. Was that point in the slides that were shown, that is the points I just quoted, was that point in the slides that were shown at the January 28, 1999 meeting with the California Department of Health Services?
A. I believe so.
Q. Was there any discussion of that point during that meeting?
A. Not that I can recall.
Q. Was there any disagreement with that point expressed by anyone during the meeting?
A. Not that I can recall.
Q. With regard to the statement in Exhibit 221 that the client expressed appreciation for the effort that went into agency presentation, in particular the thorough research analysis, does the thorough research analysis that is mentioned in that sentence of Exhibit 221 refer to the slides that are

reflected in Exhibit 222?
MS. BUTNICK: Objection. That calls for speculation. There is no way he can know that.
BY MR. LERNER:
Q. Is that your understanding of what the client was referring to?
A. I -- I can't recall.
Q. Was there any other research presented at the January 28, 1999 meeting that is not reflected in Exhibit 222?
A. I can't recall.
Q. I would like to refer to the part of Exhibit 222 that is called "CDHS Media Plan Anti-smoking", and specifically to the page with Bates number ADA 1257. The first point at the top of the page is overall media objectives, and I am quoting, "to increase awareness among Hispanics of the primary and secondary problems caused by tobacco smoking."
Now, do you have an understanding of what was meant by the primary and secondary problems caused by tobacco smoking?
A. An understanding or --
Q. What was meant by primary and secondary problems? Were you referring to primary tobacco smoke and secondary tobacco smoke?
A. I don't know. I don't know exactly.
Q. Did you -- was this page, ADA 1257, a copy of a slide that was presented to the California

Department of Health Services by Ad Americas?
A. I believe so.
Q. Did you present this slide to the CDHS representatives?
A. No.
Q. Who presented this slide to the CDHS representatives?
A. I can't recall.
Q. Did you present any slides to the CDH -- to the California Department of Health Services representatives?

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A. Yes.
Q. Which slides did you present?
A. I believe it was 1250, 1249, 1248. That's about it.
Q. Who else presented slides to the California Department of Health Services?
A. I believe Raquel Tomasino, Santiago Ogradon and I believe Liz Castells-Heard.
Q. Did anyone else at Ad Americas do research for this presentation, that is by the presentation I mean the Exhibit 222, other than yourself?
A. Yes.
Q. Who else did research on it for the presentation?
A. Raquel Tomasino, Santiago Ogradon and I believe Liz Castells-Heard.
Q. Did Raquel Tomasino do any research that

pertained to secondhand smoke?
A. I don't know.
Q. Do you think Santiago Ogradon did any research pertaining to secondhand smoke?
A. I can't recall.
Q. And how about Liz Castells-Heard?
A. I can't recall.
Q. Now, Exhibit 222 is called anti-smoking Hispanic media plan. I take it this was a document that was prepared by Ad Americas for the California Department of Health Services?
A. Yes.
Q. Was this an anti -- was this plan approved by the California Department of Health Services?
A. I believe so.
Q. In general, can you describe what this plan -- what this plan is? What is a media plan?
A. It's A plan that outlines the media throughout the campaign.
Q. So it generally describes the goals, objectives, tactics and strategies for the anti-smoking media campaign?
A. Yes. Yes.
Q. Would you please take a look at Exhibit 223, which is a document called -- actually, if you wouldn't mind telling me what the name of this document is, I would appreciate it.
A. It's "Welcome", Bienvenidos, which is

"welcome" in Spanish, "Hispanic Latino Tobacco Education Network Advisory Committee Briefing."
Q. Is this a document that was prepared by Ad Americas?
A. I believe so. Yes.
Q. I take it that was prepared for a briefing that was conducted by Ad Americas for the Hispanic Latino Tobacco Education Network?
A. Yes.
Q. When did that briefing occur approximately?
A. I believe June-July.
Q. Of 1999?
A. Yes.

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Q. What is the Hispanic Latino Tobacco Education Network?
A. They are an advisory committee or board throughout the state to the Cal Department of Health Services Tobacco Control Section.
Q. Did you assist in preparing Exhibit 223?
A. Yes.
Q. Did anyone else work on preparing Exhibit 223?
A. I can't recall.
Q. Would it be fair to say you were the primary author of this briefing?
A. Not the primary author, no.
Q. Who was the primary author of this

document?
A. It was a team effort.
Q. Who else worked on the team?
A. Santiago Ogradon, Robert Sosa, Raquel Tomasino and Liz Castells-Heard.
Q. The second page of this document, which is Bates number ADA 1168, refers at the bottom to wrap-up status of Wave II and III creative. What is meant by Wave II creative?
A. A package of creative that is pending approval.
Q. Was that a package of creative that was developed by Ad Americas?
A. Yes.
Q. Has the Wave II creative received approval?
A. No.
Q. This was receipt of whose approval?
A. Pardon me?
Q. Whose approval are you talking about?
A. Governor Davis.
Q. What is meant by Wave III creative?
A. Newer concepts.
Q. Has Wave III creative -- is the development of Wave III creative complete?
A. No.
Q. So this was something that was under development in July 1999?

A. Yes.
Q. And is still under development.
A. Yes.
Q. Is Wave II creative still under development?
A. Yes.
Q. You earlier described documents pertaining to some creative that is under development that were not produced. Were the documents that were not produced, did those pertain to Wave III creative?
A. Yes.
Q. Are there any documents pertaining to Wave II creative that also were not produced?
A. Yes.
Q. So when we are talking about Wave II and Wave III creative with respect to ETS, we are talking about the ads that you earlier mentioned were under

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development.
A. Yes.
Q. If I could refer your attention, please, to the page with Bates number ADA 1193 and the page with Bates number 1194, I take it from these pages that advertising with a message represented to the dangers of the secondhand smoke is the number one strategy that's been used by Ad Americas for anti-tobacco ads aimed at adults.
A. It's one of the strategies.
Q. Now, the -- when was the adult strategy

number one that's referenced on ADA 1194, that is adult strategy number one secondhand smoke, when was that developed?
A. In the course of January and --
Q. It was developed in the course --
A. In the course of January until January-February of 1999.
Q. Was this an adult strategy that was approved by the California Department of Health Services?
A. It was one of the strategies.
MR. LERNER: Let's go off the record.
(Discussion off the record.)
(Whereupon, a luncheon recess was taken at 12:07 P.M.)

LOS ANGELES, CALIFORNIA
FRIDAY, APRIL 28, 2000; 1:06P.M.

EXAMINATION (Continued)

BY MR. LERNER:
Q. Good afternoon.
Referring again to Exhibit 222, the anti-smoking Hispanic media plan, there are some pages that deal with multi-target plan delivery monthly flights beginning at ADA 1260. I would ask that you generally explain what this chart at Pages 1260, or the charts, I suppose, 1260 through 1263 depict.
A. Basically they outline the different reach and frequency of the messages that are targeted towards each market, and like in Tier 1, Los Angeles, the TV media, so many -- the message will reach 49.5 percent of Hispanics with -- that will -- each of these Hispanics that this message reaches, will see

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the commercial approximately four times.
Q. Over any period of time?
A. Over the monthly -- each monthly flight as defined in the heading.
Q. So this is the percentage of the population that would be reached during a particular month.
A. During a particular month of that flight.

Q. What is adults TRP?
A. Total -- they refer to adults total rating points. It's a media term that defines the number of rating points that a particular show has or something, that will reach that target, in this case adults. So it would show may -- made within Hispanic television may reach X percent of adults.
Q. So the plan, if I could just describe the plan, in lay language with respect to Tier 1 Los Angeles TV, would be for a monthly flight to reach 49-1/2 percent of Hispanic adults at four times per month.
A. Yes. That will see the message four times, you would have to purchase the -- 200 TRP's.
Q. I see.
A. So the TRP's is a media term that is -- it's more of a buying term, I suppose, that in order to reach your goal of reaching 49 percent -- 49.5 percent you have to purchase that many.
Q. How are the percentages in the monthly -- for the reach and frequency -- I presume these percentages for reach and the frequency are goals that are established as part of the plan?
A. Yes.
Q. How did those goals get established?
A. We proposed or were given a budget. We developed the most effective type of -- the most effective type of plan and this is what our agency

recommendation was in order to retain -- in order to have the greatest reach, this is what you would need to purchase.
Q. This was, then, goals for reach of frequency that were approved by the client.
A. We proposed them, and I don't recall if they were approved or not. This is our -- sort of our recommendation to the client.
Q. Now, is there a document that describes what was approved by the California Department of Health Services for media buys?
A. The plan that's laid out in the back of the document was the plan -- one of the plans that was -- that was approved.
Q. So there are other documents that reflect what was approved?
A. Yeah. There -- the authorizations that we ended up making purchases on may vary slightly. There is sort of a summary -- a document that summarizes it. It is not something we can take literally, and we try to buy media to this document. But it's not exactly what -- to the T, what we purchased.
Q. In any event, an effort was made to make

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buys that implemented this plan.
A. Yes.
(Deposition Exhibit 224 was marked for identification.)
BY MR. LERNER:

Q. Exhibit 224 is a document called "Conference Report #1" dated February 3, 1999. Can you tell me what this document is.
A. This is -- it appears to be a conference report.
Q. This is a conference report that was attended by you on February 3, 1999? I'm sorry, this reflects a conference that you attended on February 3, 1999.
A. I -- yes. Yes, I did.
Q. What was the purpose of the conference that was -- that's described in this conference report number one?
A. It was the Ad Americas presentation introduction to the Hispanic Latino Tobacco Education Network media subcommittee and it was to receive input from the Latino network on strategic direction on countering smoking in California.
Q. Was Exhibit 223 -- does Exhibit 223 contain slides that were used at the February 3, 1999 conference?
A. Yes.
Q. Was there any discussion at that conference concerning particular cultural factors with respect to anti-smoking ads -- strike that.
Was there any discussion at the February 3, 1999 conference that pertained to cultural factors that would distinguish the Hispanic market

from the general population in terms of, for example, cultural factors or susceptibility to smoking influences?
A. Yes.
Q. In general, based on your work as the account executive for the California Department of Health Services anti-smoking campaign, can you tell me what are the particular things about the Hispanic market that distinguish it from the general population with respect to your work as -- in the anti-smoking advertising.
A. Can you be a little bit more specific?
Q. I am just trying to figure out what is different about the Hispanic market with regard to anti-smoking advertising.
A. One of them is language.
(At this point MALENA BARNES entered the deposition proceedings.)
BY MR. LERNER:
Q. Are there other factors?
A. Yes. Cultural, culture. I would say language and culture summarizes the difference which affects the -- it affects how Hispanics view or receive certain things which they see.
Q. I guess with regard to language it's pretty obvious it's Spanish versus English. Right?

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A. Yes.
Q. But with regard to culture, what are the

specific cultural factors that make the Hispanic population different with regard to your work than the population as a whole?
A. With respect to anti-smoking or just general?
Q. No. With respect to anti-smoking.
A. It's -- the family unit is stronger, I believe, and -- within the Hispanic culture. The family influence plays a stronger part of someone's decision to start smoking which I believe the general market is not -- not as strong. The Hispanic family you have a stronger influence from the family. It's more culture accepted, depending upon the different levels of assimilation or if somebody is a new arrival into the state.
Q. Any other cultural factors? Besides family and level of assimilation.
A. The patriarch of the family is, again this is probably referring back to the family, but the patriarch of the family is perceived as a role model. We view our parents, I believe, more strong as our role model versus someone in the general market might perceive a third party. Within Hispanic culture our parents are usually our role models.
Q. Any other cultural factors with respect to the influence of family on smoking behavior?
A. I would say that our family is probably one of the bigger influences and family defined as not

only immediate, but as including secondary family, i.e., cousins.
Q. So based on that insight, did you develop the ads that attempted to deal with the influence of family on smoking behavior?
A. That was one of the strategies.
Q. Did other strategies emerge based on the particular family influence in Hispanic culture?
A. A family influence or a role model approach.
Q. I will refer you to Exhibit 222 again, specifically to Page 1253. Does this page set forth other cultural factors that make the Hispanic population different than the general population with regard to attitudes towards smoking?
A. Certain factors of these do. But if you can be more specific.
Q. Which of these factors is specific to Hispanic culture as opposed to the general population?
A. I would say number one, smoking is an accepted relaxation reward for hard work. And actually I would say -- that one is probably top of the list, but with the other points that are mentioned, all certainly have an effect on Hispanics or play more so among Hispanics than the general market.
Q. So these are -- are these factors that Ad Americas took into account in designing ads to counter

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smoking among Hispanics?
A. These are ideas that we mentioned, that we pointed out to the client as factors to consider when targeting the Hispanic.
Q. Was any of these ideas actually taken into account in designing creative for the Hispanic market?
A. No.
Q. Was the influence of the patriarch or the family unit taken into account in @designing creative for the Hispanic market?
A. Yes.
Q. So these factors were viewed as less important that the patriarchal influence or family influence?
A. As a strat -- as a particular strategy, yes. The patriarch or role model approach or -- is a strategy, strategy that we based our grade upon.
Q. Now, was the patriarch or role model approach also taken into account in designing creative for -- to counter environmental tobacco smoke?
A. Yes.
Q. If you would refer to the second page of Exhibit 224 under "creative," there is a bullet point that reads, "Members asked agency to include executions ETS at the workplace."
Can you tell me what discussion was had concerning that point and exactly what this phrase might mean?

MS. BUTNICK: Objection. Compound.
THE WITNESS: Can you --
BY MR. LERNER:
Q. What discussion was had at this meeting concerning, that is the February 3, 1999 meeting, concerning ETS?
A. That it was an issue.
Q. Did you prepare these minutes of this February 3, 1999 meeting?
A. I can't recall.
Q. Do you have an understanding of what was meant by the bullet point I just read?
A. That was the point that referred to members asked agency to include executions ETS at the workplace?
Q. That's right.
A. Apparently the members had saw that it was an issue that we should pursue.
Q. By executions -- what does the word "executions" mean in that context as you understand it?
A. In creative. Creative execution.
Q. So basically there was a request that Ad Americas target environmental tobacco smoke in the workplace in its creative?
A. Yes.
Q. On the third page under the heading "secondhand smoke," there is a reference to warning

label. What is warning label?
A. That was a subtitle of a spot.

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Q. What do you mean by "spot"?
A. I'm sorry, creative. That was the title of a creative.
Q. Was that one that was already in existence at the time?
A. No.
Q. This was one that was being prepared.
A. This is one that's being prepared.
Q. Do you know whether prior to the time you began to work on the Ad Americas account, as account executive, whether any work was being done for the California Department of Health Services by Ad Americas?
A. I don't know.
MR. LERNER: We will mark that as next.
(Deposition Exhibit 225 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 225 is a letter to Christine Steele from Liz Castells-Heard dated August 30, 1999 with some attachments. Have you seen this document before?
A. Yes.
Q. If you turn to Page 79, which is Bates marked number CHW 3542, there is a brief bio for you. Do you see that?

A. Yes.
Q. It says that you plan to devote 80 percent of your time to the California Department of Health Services tobacco education media campaign account. Can you tell me in general or just generally what percentage of your time have you devoted to the account since you began working on it?
A. I would say between 70 and 80 percent.
Q. Now, this document is dated August 30, 1999. Do you know whether it was done in connection with an application to continue working for -- on the tobacco education media campaign account in the year 2000?
A. Yes.
Q. Was there a similar statement of intent for the year 1999 that was submitted to Asher & Partners by Ad Americas?
A. I can't recall.
Q. Did you participate in preparing this document?
A. Yes.
Q. Which parts of this document did you prepare?
A. A format of the total document as well as inputting the different bios and some of the content of our existing clients.
Q. Now, with regard to Page 72, which is the bio of Ms. Castells-Heard, it says, she looks forward

to devoting 15 percent of her time to the account, as to the California Department of Health Services Tobacco Control Section account. Is that a number that you contributed to this document?
A. I'm sorry, which page?

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Q. Page 72.
A. The question is what?
Q. Let me say it over again. How was the percentages of time devoted to the tobacco control account determined for purposes of this document?
A. They were determined by management.
Q. Did you have input on that?
A. No.
Q. So did you solicit those numbers in preparing this?
A. No.
Q. Who did develop the numbers for percentage of time devoted?
A. I don't recall.
Q. Has Marie Sahagun been working on the Department of Health Services account?
A. I believe I answered that already.
Q. Is she one of the people you mentioned earlier today?
A. Yes.
Q. So she has been working about 15 percent of her time on the account.
A. I -- I can't recall.

Q. Is Anita Alvarez one of the people who was also working on the account?
A. She was one of the possibilities mentioned as copywriter for this account.
Q. Had she worked on -- has she done work as a copywriter for the account?
A. In developing some of the copy ideas, yes.
Q. In formulating the media campaign, did Ad Americas use any focus groups?
A. Yes.
Q. What was the purpose of using focus groups specifically?
A. To test some creative concepts.
Q. When you mean test creative concepts, exactly what does that mean?
A. It's taking storyboards and presenting them to groups and see how these groups respond to the different creative messages.
Q. Then reformulating the stories or the storyboard or the advertisements according to the responses from focus groups?
A. Basically, yes.
Q. When were focus groups conducted for the California Department of Health Services account?
A. The end of March, early April.
Q. Of 1998?
A. Of 1999.
Q. Excuse me. Have any focus groups been

conducted since April 1999 for this account?
A. On behalf of Ad Americas, no.
Q. I'm sorry?
A. On behalf of Ad Americas, no.
Q. To your knowledge were any other -- were these Hispanic focus groups?
A. Yes.
Q. Did you participate in the focus groups?

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A. Could you be more specific?
Q. Did you attend the focus groups?
A. Yes.
Q. Did you also help design the storyboards for the focus groups?
A. Be more specific on design.
Q. Did you help prepare the storyboards?
A. Yes.
Q. Did you help prepare the questionnaires for discussion for the focus groups?
A. Yes.
Q. Did you do anything else with regard to the focus groups?
A. Can you be more specific?
Q. Well, you said you attended the focus groups. You worked on storyboards for the focus groups. You worked on questionnaires for the focus groups. Did you do anything else with respect to those focus groups? Did you participate in evaluating what happened at the focus groups?

A. Yes.
Q. Did you write any reports pertaining to the focus groups?
A. No.
Q. Did you review any reports pertaining to the focus groups?
A. Yes.
Q. Did you take the focus group information into account in your subsequent work in creative?
A. Yes.
Q. Do you recall what was the -- what conclusions were drawn from the focus groups with regard to environmental tobacco smoke?
A. I can't recall exactly.
Q. Do you recall generally?
A. Yes.
Q. What was the -- what conclusion was general -- what were the conclusions that were generally drawn from the focus groups concerning ETS?
A. That among teens, that they -- actually, can I strike that?
Q. Sure.
A. Among adults ETS, the effect of ETS had a stronger impact among Hispanics in developing a creative message to have them quit smoking.
Q. A stronger impact among Hispanics, not among the population as a whole?
A. The population as in population of --

Q. California.
A. I can't -- this --
Q. What did you mean by "stronger impact among Hispanics"?
A. That that was certainly -- it impacted Hispanics more, that pursuit of the strategy, that if you developed a creative message that showed the effects or telling them that the effects of secondhand smoke were --
Q. Harmful to family members?
A. Harmful to family members, they -- it

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might get somebody to quit -- stop smoking if there was a parent. If I knew I was hurting someone in my family.

Q. Let me just get some of these documents before you so that we can pinpoint what happened when.

(Deposition Exhibit 226 was marked for identification.)

BY MR. LERNER:

Q. Exhibit 226 is a letter to Tacey Buffington dated February 18, 1999. Is that Mr. Ogradon's signature on Page 2?

A. I believe so.

Q. And then at the page with the Bates number ADA H60, there is a fax from you to Tacey Buffington. Is that your signature on that page?

A. Leonard?

Q. Leonard.

A. Yes.

Q. So this -- and the following page is an e-mail and was this the item that was attached to your fax? You see the fax cover sheet that you signed, which is ADA 860, says it's a three-page transmittal.

A. Um-hum. I can't recall.

Q. It would be fair to say that the focus groups you were earlier discussing were conducted in Los Angeles and in Fresno at the end of March?

A. At the end of March, early April, yes.

Q. How many groups were conducted?

A. I don't remember exactly.

(Deposition Exhibit 227 was marked for identification.)

BY MR. LERNER:

Q. Exhibit 227 is a document called "Conference Report #2" dated March 10, 1999. Was this another conference that you attended with Asher & Partners as representatives of the California Department of Health Services?

A. I can't recall.

Q. Did you prepare this document?

A. I believe so.

Q. What is meant by -- on the first page under target objectives, what is meant by Tier 1?

A. The markets identified, Los Angeles, Orange County and the markets listed there, Riverside, San Bernardino, Oxnard, Ventura.

Q. Tier 2 refers to San Francisco, San Jose, Oakland, San Diego, Fresno and Sacramento?

A. Yes.

Q. Why is there a distinction among those different markets into Tier 1 and Tier 2?

A. They just identified by groups of markets that are -- by population, I believe it was.

Q. What is -- what is the business of Durazo Communications?

A. They are the Hispanic public relations agency for the California Department of Health Services.

Q. Did you work with Durazo Communications in formulating the media campaign?

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A. Yes. We consulted together.
Q. On Page 2 there is a reference to, the last full paragraph on the page:
"Ad Americas will place print with Hispanic minority owned publications in conjunction with Durazo Communications."
I take it determination of where to place print ads was made in conjunction with @Durazo?
A. With consulting them, yes.
Q. Was Durazo consulted as to where to place any other ads? By that I mean TV, radio or outdoor.
A. I can't recall exactly.
Q. On Page 1, the last sentence on the page

mentions topspin added value to support Durazo Communications plan. What did you mean by the Durazo Communications plan?
A. They have their separate public relations objectives and we worked together to achieve as many added value opportunities for them so they could use in public relations.
Q. By added value opportunity, you mean radio spots or public service announcements?
A. Yes.
Q. Or interviews?
A. Yes.
Q. These would be added value spots that would be aimed at the Hispanic market?
A. Yes.
Q. Would they be in the Spanish language?
A. I --
Q. Or both Spanish and English?
A. I would say primarily Spanish.
Q. Were there any other matters as to which you worked together with Durazo Communications in connection with the California Department of Health Services media campaign?
A. Not that I can recall.
Q. Would it be fair to say that Ad Americas would attempt to use its media buys as a vehicle to obtain value added spots that could be employed by Durazo?

A. Yes.
(Deposition Exhibit 228 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 228 is a document from Patricia Lopez on Access Worldwide letterhead to you dated March 22, 1999. Do you recognize this document?
A. Yes.
Q. What is the business of Access Worldwide?
A. They are a research group.
Q. A market research group?
A. Yes.
Q. Was Access Worldwide engaged by Ad Americas to assist with the focus groups that you earlier described?
A. Yes.
Q. What was the work of Access Worldwide in

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connection with the focus groups?
A. They conducted groups.
Q. And did Patricia Lopez work or conduct the groups? Was she the person who moderated them?
A. No.
Q. Who moderated the groups for Access Worldwide?
A. I believe it was Isabel Balboa.
Q. Were you present in the room where the members of the focus group were when they were being conducted or did you observe them from like behind a

screen or mirror?
A. It was behind a screen, mirror. See-through mirror.
Q. And how many days were spent conducting focus groups?
A. I believe it was -- it was four.
Q. How long was each focus group session approximately?
A. On each day?
Q. Yes. Typically.
A. Between two and three hours each day.
Q. So each session was typically two to three hours?
A. Depending upon which group was being met. It was varied by the total groups.
Q. Now, this memo, which is Exhibit 228, refers to groups of females which are 7th and 8th graders and 9th and 10th graders. Were those the groups that were conducted?
A. I believe so.
Q. They were also male 7th and 8th graders and 9th and 10th graders were separate groups?
A. I can't recall if they ended up being intertwined.
Q. Pages of Exhibit 228 which are Bates stamped 8745 and 46 is entitled "Anti-Smoke Discussion Guide Teens," and it says "final March 22, 1999." Was this the discussion guide that was in fact used in

conducting the focus groups for teens?
A. I believe so.
Q. Pages 747 and 748 and 749 are titled "Anti-Smoke Discussion Guide Adults Final March 22, 1999." Is this the discussion guide that was used in the focus groups for adults?
A. I believe so. If not minor tweaked at the time of the focus group.
Q. When the discussion -- I am just going to ask a question about how the guide was used during the focus group. Were the questions that were set forth on the guide posed verbatim to the members of the group?
A. They followed the guide as closely as possible.
Q. I see the question 11 on Page 2 of the guide for teens was, "Are you exposed to secondhand smoke? If yes, how do you feel about that?" I take it that was one of the questions that was posed to the teens?

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A. I don't know if it was -- I don't recall if it's verbatim, but --
Q. Secondhand smoke was a topic of discussion at the teen focus groups?
A. Yes.
Q. I see on the anti-smoking discussion guide for adults and Part 2, question 7, "Is there secondhand smoke where you work? Is it important to

you that your workplace be smoke-free?" Were those questions posed at the adult focus groups?
A. I'm sorry, what was the question again?
Q. The question is concerning secondhand smoke of your Part 2, Item No. 7.
A. I don't recall if that was -- if that was posed during the focus groups.
Q. Was there any discussion of ETS in the adult focus groups other than with regard to that particular question?
A. I believe so.
Q. What other discussion was there at the adult focus groups concerning ETS?
A. The topic of secondhand smoke.
Q. Was there discussion concerning the effect of secondhand smoke among loved ones or family members?
A. Yes.
(Deposition Exhibit 229 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 229 appears to be a report or, shall I say, reports, by Cultural Access Group concerning anti-smoking advertising research. Is this document a report that was -- you received from Cultural Access Group concerning the focus groups?
A. Yes.
Q. I know the cover page that is Bates

stamped ADA 1199 is -- appeared -- was produced with the section titled "caveat." It was kind of upside down at the top of the page. Is there something that is omitted from this page to your knowledge?
A. I can't recall now.
Q. Was there a cover page to this report which said what its title was?
A. Not that I can recall, no.
Q. Was this report presented by Ad Americas to the California Department of Health Services?
A. Yes.
Q. Did you have occasion to discuss the report with anyone from the California Department of Health Services?
A. Not that I can recall exactly.
Q. Do you recall any reaction by anyone at the California Department of Health Services to this report?
A. Yes.
Q. What reaction do you recall in that regard?
A. That -- I can recall that some of the ads which the client felt strong about did not test as

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well as with the focus groups.
Q. Now, were the questions that are set forth in the discussion guides asked of the group after ads were shown to the group or before?
A. Can you be more specific?

Q. I am trying to understand what was the sequence of events at one of these focus groups. I take it you have a series of questions and then you have some storyboards.
A. Right. In the discussion you have your @N control, your warm-up as specified in there and those were the questions that were asked at the beginning and then the creative was eventually led to -- eventually, showing them the creative.
Q. Is there any set time at which the creative is shown to the group in terms of the schedule of questions?
A. Not that I can recall.
Q. So it's something that the moderator does at whatever time it appears to the moderator to be appropriate?
A. It typically happened towards the end.
Q. So the creative was shown after questions were asked to determine what various attitudes were concerning various smoking topics.
A. Yes. And then creative was presented.
Q. If you would please turn to Page 5 of this report, pages Bates stamp number ADA 1204, this is the page begins with the heading, "Conclusions and Recommendations from the California Department Of Health Services and Ad Americas." In the bullet point in the middle of the page there is a statement, "all respondents are aware that smoking is dangerous and

damaging to both smokers and third parties."
Did you understand that sentence to mean that smoking is dangerous and damaging to third parties is a reference to the dangers of environmental tobacco smoke -- or secondhand smoke?
A. It appears so.
Q. Was it consistent with your operations that members of the focus groups, which I guess are termed respondents here, appeared to be aware that secondhand smoke was dangerous?
A. From what I recall, yes.
Q. So the statement in here it's bad, harmful to the body, family, children, is basically presented, as you understand it, as typical of adult reaction with regard to secondhand smoke?
A. I'm sorry, I didn't understand.
Q. There is a sentence that reads underneath, italicized, which I take it is a quote from a respondent, "it's bad, harmful to the body, family, children." And then it says "adult." What did you understand that meant?
A. As a respondent -- as a response for one of the adults.
Q. Then on Page 6, which is Bates stamped ADA 1205, there is a boldfaced sentence in the middle of the page that says:

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"There may be an opportunity to play upon the secrecy and denial both teens

and adults experience when smoking."
And the next bullet point includes a sentence -- the sentence says:
"When asked where they smoke, most adults reported smoking with friends outside of their home, usually away from children. All were aware of the dangers of secondhand smoke and either voluntarily smoked outside away from family members or were made to do so by their family."
Is that -- those sentences consistent with your observations of what was said by people concerning their smoking behavior at the focus groups?
A. That was -- are you referring to the italicized?
Q. No. I am referring to the two sentences that say that all were aware of the dangers of -- the sentence that, particularly, all were aware of the dangers of secondhand smoke and either voluntarily smoked outside away from family members or were made to do so by their family.
The question is, was that consistent with your own observations of what was stated at the focus groups?
A. Some of them, yes. Yes.
Q. Would you agree with the next -- is the

next boldfaced paragraph consistent with your observations, that is the boldfaced paragraph that reads:
"These adult smokers know the dangers of smoking. However, it appears that there is an opportunity to further, quote, guilt, unquote, them into quitting for their family's sake, since family is considered a cornerstone of Hispanic culture."
The question is, is that observation consistent with your observation of the focus groups?
A. Yes.
Q. Were any ads shown to the focus groups that specifically pertained to secondhand smoke?
A. Yes.
Q. Which ads shown to the focus groups pertained to secondhand smoke?
A. They are -- those aren't present. They were part of the Wave II and Wave III that's still being developed.
Q. So there were no ads pertaining to secondhand smoke to the focus groups in March and April of 1999?

A. Yes. There were storyboards of these ads, but this is still being developed.

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Q. So storyboards of certain ads pertaining to secondhand smoke were shown at the focus groups?
A. Yes.
Q. Which are the ads -- which storyboards were shown that pertain to secondhand smoke?
A. Can I consult?
Q. Sure.
(The witness and counsel confer.)
THE WITNESS: Generally, they were ads that referred to a family member smoking near a child.
BY MR. LERNER:
Q. Were any ads -- so that ads that were shown -- the storyboards that were shown were for proposed ads?
A. Yes.
Q. Were any of the proposed ads shown at the focus groups in March-April 1999 ever produced?
A. No.
Q. Has Ad Americas arranged focus groups for any ads that -- pertaining to ETS that have been produced?
A. Subsequent to then or --
Q. At any time.
A. The ads that are presented here attached were also shown during that -- for those focus groups. And those have been produced.
Q. By the ads attached, which ones do you mean?

A. The ads listed in 1238 through 1240.
Q. Does the ad shown at page Bates stamped ADA 1238 pertain in any way to secondhand smoke?
A. No.
Q. Does the ad at Page ADA 1239 pertain in any respect to secondhand smoke?
A. No.
Q. And how about the ad at ADA 1240?
A. No.
Q. What, specifically, was shown to these focus groups that pertained to secondhand smoke? What storyboards pertaining to secondhand smoke were shown to the groups?
A. Generally speaking, those were ads that dealt with a family member that was smoking near a child.
Q. What are the names of those ads? Are the names of those ads in this report?
A. Yes.
Q. What are they?
A. Daddy's Eyes, Faces, Warning Label and the rest of the ads on Page 1203 at the top section for TV. Actually it's the Baby, X-ray, Mother and Son, Warning Label, Faces and Daddy's Eyes.
Q. That's under the category strategy adults secondhand smoke.
A. Yes.
Q. Under the heading -- further down on the

page, there is another category of television executions under secondhand smoke including an ad

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called In the Name of the Family. Is that also an ad that was shown to the group that pertained to secondhand smoke?

A. I believe so.

Q. So I take it the groups were shown proposed television ads and proposed outdoor ads. Is that correct?

A. Yes.

Q. Were the groups shown any print ads?

A. Yes.

Q. And were the groups -- did the groups hear any radio ads, proposed radio ads?

A. Can you be more specific?

Q. I am not quite sure how to be more specific. Were any radio ads presented to the groups?

A. Pertaining to ETS?

Q. Pertaining to ETS. Thanks.

A. I can't recall.

Q. Now, have you --

A. I believe not.

Q. So the secondhand smoke ads that you identified as listed on Page 4 have not been produced at this point -- strike that. Let me ask it again.

Has any of the secondhand smoke ads identified on the page Bates stamped ADA 1203 been produced at this point?

MS. BUTNICK: I think you will have to change the word "produced". Because if it is a television ad, it's been created.

MR. LERNER: All right. I think that's fair.

Q. Has any of these ads been run in the media?

A. No.

Q. Were any of the secondhand smoke ads that are identified on Page ADA 1203 changed in any respect in response to the focus groups?

A. Yes.

Q. Which ads were changed or -- let me ask you a different question. Generally, what changes were made to those ETS ads?

A. Can I consult with --

Q. Sure.

(The witness and counsel confer.)

THE WITNESS: Based on the focus groups, some of the ads were strengthened in their message to have a stronger family influence approach.

BY MR. LERNER:

Q. In other words, the ads were strengthened to emphasize that factor in trying to dissuade a viewer from smoking around family members.

A. Smoking period.

Q. Smoking period. Did these ads assume a certain level of knowledge of the viewer as to the dangers of ETS?

A. No.

Q. So the ads were meant to have an impact on people who were already aware of the dangers of ETS.

A. Whether they were aware or not, they were, yes. They were -- these ads were tested to them. We

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had prior knowledge of whether they were aware. It was one of the discussions. It was part of the discussion at the beginning -- at the intro of each -- each of the focus groups.

Q. Was what?

A. Whether they were aware of this was one of the questions.

Q. Generally, the focus groups suggest that people were aware of the dangers of secondhand smoke. The purpose of the ads was then --

A. Was purely execution to find out whether the ads had an impact on them.

Q. Actually impact their behavior.

A. Yes.

(Deposition Exhibit 230 was marked for identification.)

(Recess taken.)

BY MR. LERNER:

Q. Exhibit 230 is another fax transmittal from you to Alison Melody. Is that correct?

A. Yes.

Q. This is Hispanic -- 1999 Hispanic plan delivery charts, gross impressions. What is meant by

"gross impressions"? I believe it's the -- when a commercial airs, how many times is it going to get seen once, like at a glance. For example, if you see a commercial once, it's an impression. How many times it is going to make impressions with the Hispanic audience.

Q. So this tells the number of times an ad was seen by each person in effect?

A. Not necessarily by each person, but --

Q. By the population as a whole? So -- but take, for example, Tier 1 Los Angeles, what is meant by "net reach 70"?

A. 70 percent. It would reach 70 percent.

Q. So 70 percent of the total market?

A. Of the -- yeah. Of the market.

Q. And then the market is defined to include the Hispanic population of the Los Angeles area?

A. Right. This is -- we are strictly looking at Hispanic.

Q. "Average frequency 43.2", what does that mean?

A. That's the frequency of times that that ad is going to be shown, so to speak. Not necessarily going to be seen, but that's frequency. Frequency of the ad.

Q. During the entire year?

A. Given -- yes. I believe it was the entire year. Actually, the entire plan.

Q. I will have to ask you for another explanation because it didn't compute for me. The average frequency means the number of times the ad was -- all ads were shown in that market during that particular year?

A. Referring to a particular ad.

Q. What does the 43.2 number represent exactly?

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A. That's the number of times the ad is shown. I believe it's probably --
Q. Over what time period?
A. I don't recall. It appears to be the -- within a given flight.
Q. Then teens impression, what does that 1.5 billion number represent?
A. It's within -- within the flight, number of impressions that a teen will see this -- see the ad.
Q. Would it be fair to say that's the number of times that the ad was seen by teens in the Los Angeles area during 1999?
A. I don't believe so.
Q. Does that refer to all ads or any -- or a particular ad?
A. I can't recall.
Q. Is this a document you prepared?
A. No. I don't believe so.
Q. What media ads are covered by this

document as you understand it? By that I mean, does it cover TV, radio, print and outdoor?
A. I can't recall, but it appears to be. At least in these terms --
Q. The word "impression" refers to television?
A. Television and outdoor, usually.
Q. So when we -- it would be fair to conclude that California total on the first page is the 66 percent of teens and the Tier 1 and Tier 2 markets have been reached by these ads during 1999 and with a total of 2.2 billion impressions among that group?
A. That was the -- that was the objective.
Q. That was the objective?
A. That was the objective.
Q. And then the objective with regard to adults as shown on Page 2 was to reach 94 percent of Hispanic adults via 11 billion ad impressions?
A. Again, that was the goal and objective.
Q. Does this represent a revision of the media plan that you previously reviewed, Exhibit 222? I say should does this represent a revision of a portion of the plan which is Exhibit 222?
A. I can't remember if it was or wasn't.
Q. Was it a supplement to the media plan?
A. I believe so.
Q. So these were kind of annual goals for statistics rather than just the results expected for

monthly flights?
A. Yes.
(Deposition Exhibit 231 was marked for identification.)
BY MR. LERNER:
Q. Do you recognize Exhibit 231 as a memo from Liz Castells-Heard to Tacey Buffington?
A. It appears so.
Q. Have you seen this document before?
A. I believe so.
Q. And it was proposed, I take it, by

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Ms. Castells-Heard that the California Department of Health Services enter into a sponsorship or buy a sponsorship package for the Los Angeles Galaxy?
A. Um-hum.
Q. Did that occur?
A. No.
Q. Did the California Department of Health Services -- well, maybe I should ask you, what was the reaction of the California Department of Health Services to this proposal?
A. I don't recall.
Q. Did you discuss it with anyone from the California Department of Health Services?
A. I don't recall.
(Deposition Exhibit 232 was marked for identification.)
BY MR. LERNER:

Q. Exhibit 232 is a Spanish-language ad with the caption beneath handwritten, "Are your kids dying to be with you?" I take it that's a translation of the Spanish in the advertisement?
A. Um-hum. Yes.
Q. Is this an ad that pertains in any respect to secondhand smoke?
A. Yes.
Q. Was this ad approved by the California Department of Health Services?
A. It -- no.
Q. Was it proposed to the Department of Health Services by Ad Americas?
A. Yes.
Q. Was this ad created by Ad Americas?
A. Yes.
Q. Was the ad disapproved by the California Department of Health Services?
A. I'm sorry?
Q. Did the California Department of Health Services disapprove of this ad?
A. No.
Q. Is this one of the Wave II or Wave III ads that's still pending approval?
A. No.
Q. When was this ad produced?
A. I can't recall exactly.
Q. How about approximately?

A. Approximately February-March 1999.
Q. What was the -- did you discuss it with anyone from the Tobacco Control Section?
A. Yes.
Q. And who was that?
A. Tacey Buffington.
Q. What did she say concerning this ad?
A. That we were going to test it.
Q. Was it tested?
A. Yes.
Q. In the focus groups?
A. Yes.
Q. What was the conclusion concerning this ad, following the focus groups?

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A. That -- I don't -- I can't recall exactly.
Q. So this was one of the ads shown to the focus groups, though.
A. Yes.
Q. And after the focus groups the decision was made not to go forward with this ad?
A. For this particular ad, no.
Q. That's correct?
A. Yes.
Q. Do you recall whether there was any discussion that this ad was not strong enough in its anti-tobacco message?
A. Yes.
Q. Is that -- to your recollection is that

the reason the decision was made not to go forward with it?
A. I believe so, yes.
(Deposition Exhibit 233 was marked for identification.)
BY MR. LERNER:
Q. Can you identify Exhibit 233, please.
A. It appears as if it's a summary of the research report.
Q. Do you know who prepared this document?
A. No.
Q. You didn't prepare it?
A. No.
Q. Was there a subsequent version of this document? I know this one is marked draft number two, June 22, 1999, for discussion purposes only.
A. I don't know.
Q. How did you come to receive this document?
A. Fax.
Q. And from whom?
A. I can't recall.
Q. At the top there is a -- you see the line at the top of the page, the date June 24, 1999, then 1500 hours and it says "DHS dot TCS dot"?
A. Um-hum.
Q. Is that from the Department of Health Services Tobacco Control Section?
A. Yes.

Q. So you received it from the Tobacco Control Section?
A. Yes.
Q. Was it sent to you?
A. I don't recall exactly who it was that sent it to me, exactly.
Q. Was this a document that was drafted by someone at Ad Americas?
A. No.
Q. Do you know where it was drafted?
A. No.
Q. Do you know whether it was drafted by someone at the Department of Health Services?
A. I don't know.
Q. What is your understanding as to who drafted this document?
MS. BUTNICK: Objection. That calls for

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speculation. He said he doesn't know.
THE WITNESS: I don't know who drafted it.
BY MR. LERNER:
Q. Do you know whether this document was ever put into a final version?
A. I can't recall.
Q. Do you have an understanding of whether this document was drafted for any particular audience?
A. I believe -- I believe that was the La/TEN network.
Q. Was a report ever made to the Hispanic

Latino Tobacco Education Network concerning the focus groups that were conducted in March and April of 1999?
A. No.
Q. Since the meeting in early 1999 that we discussed this morning concerning -- with the Hispanic Latino Network, have you attended any meetings with that organization since that time?
A. Prior to which meeting from 1999?
Q. Please refer to Exhibit 223. That's the briefing for the Hispanic Latino advisory committee. You mentioned you attended that briefing.
A. Um-hum.
Q. And that briefing was held in -- it was approximately February 1999. Is that correct?
A. This, no.
Q. When was that briefing held?
A. June 1999.
Q. Where was it held?
A. I believe it was in Laguna Niguel.
Q. Have you attended any meetings or briefings -- meetings with or briefings of the Hispanic Latino Tobacco Education Network since June 1999?
A. No.
Q. Did you attend any meetings with or briefings of the Hispanic Latino Tobacco Education Network before June 1999?
A. Yes.

Q. When was the first one you attended?
A. It was at the -- I believe it was I mentioned the February meeting, the media subcommittee.
Q. Was Exhibit 223 discussed at the February 1999 meeting with the media subcommittee?
A. That was -- a portion of the presentation that was presented in that meeting.
Q. And what else was presented at that meeting?
A. Actually, that's the entirety. The rest is -- remainder is the other documents, the media plan in there.
Q. So the media plan was also presented?
A. Yes. At that meeting as well.
Q. What documents then were presented or discussed with the Hispanic Latino Tobacco Education Network at the June 1999 meeting in Laguna Niguel?
A. The same meeting -- the same document.
Q. Was it a different group of people who

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attended the meeting in June from the meeting in February?
A. Yes. There was a -- a larger audience.
Q. So the February meeting was just the media subcommittee?
A. Yes.
Q. What group attended the 1999 meeting?
A. I believe it was the -- more network

members throughout the state.
Q. So it was a membership meeting of the entire network.
A. I believe so, yes.
Q. Are you a member of the Hispanic Latino Tobacco Education Network?
A. No.
Q. Is anyone from Ad Americas a member?
A. No.
Q. How many days were you in Laguna Niguel for the June 1999 meeting?
A. It was just the morning of.
Q. During 1999, what ads were actually run in the media by Ad Americas that pertained to secondhand smoke?
A. I believe one of them was titled Gravesite.
Q. Was another one I Am Smoke/Female and I Am Smoke/Male?
A. That does have some -- in that message it does have some second smoke ETS insinuations or --
(Deposition Exhibit 234 was marked for identification.)
BY MR. LERNER:
Q. Can you identify Exhibit 234, please.
A. It appears to be a memo from Robert Sosa to the -- to the Ad Americas internal anti-smoking team.

Q. You were a member of that team?
A. Yes.
Q. And you received this memo at about March 1 of 1999?
A. I can't recall.
Q. Do the -- the memo references the names of certain anti-tobacco advertisements. Correct?
A. Yes.
Q. And one of them is the one you just mentioned, Gravesite?
A. Yes.
Q. Does any of these other ads pertain to secondhand smoke?
Let me ask you a separate question. Are you familiar with the other ads that are listed on this document?
A. Could you be more specific?
Q. When you became account executive for the California Department of Health Services account, did you do anything to familiarize yourself with the existing body of advertising that pertained to -- existing body of anti-smoking advertising?
A. Yes.

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Q. Did you take a look at previous anti-smoking ads that were produced for the Hispanic market?
A. Yes.
Q. So did you review the ad Hidden Killer?

A. Yes.
Q. Did you review the ad Worried Children?
A. Yes.
Q. Did you also review the ad Worried Children II?
A. Yes.
Q. Did you review the ad You Smoke, She Smokes?
A. I can't recall.
Q. Did you review Store Tactics?
A. Yes.
Q. The ad You Smoke, She Smokes is also an ad that's aimed at secondhand smoke, is it not?
A. I can't recall.
Q. Is Hidden Killer a secondhand smoke ad?
A. Yes.
Q. Is Worried Children a secondhand smoke ad?
A. I can't recall.
Q. Is Worried Children II a secondhand smoke ad?
A. I can't recall exactly.
Q. Is Store Tactic a secondhand smoke ad?
A. No.
Q. Do you have an understanding of what was meant by the phrase that the following spots are recommended to continue running until our creative breaks. What specifically did you understand was meant by our creative breaks?

A. I believe it was in the process of developing our ads. These are recommend -- these are possible recommendations of ads that can be aired.
Q. Do you know what the result was in terms of which ads were -- strike that.
Were these ads being run at the time you received this memo?
A. To my knowledge, no.
Q. Well, Mr. Sosa says that the following spots are recommended to continue running. Did you understand him to mean that these ads were running at the time and should continue?
A. I believe -- I believe their understanding was that these ads were produced and that could be implemented or shown during our media plan.
Q. When did ads begin to be shown under the ad America's media plan approximately?
A. I believe April. April of 99.
Q. And did ETS ads -- were ETS ads included in the ones that began to run in about April of 1999?
A. I believe so. Gravesite is -- image of Gravesite had some anti- -- some secondhand smoke insinuations in it. That's when it started airing.
Q. Did Hidden Killer also run beginning in April of 1999?
A. No.

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(Deposition Exhibit 235 was marked for identification.)

BY MR. LERNER:

Q. Exhibit 235 is a memo that you wrote and sent to Tacey Buffington on May 13, 1999. Is that correct?

A. I believe so.

Q. You mentioned that the I am Smoke/Female ad had a secondhand smoke component. I take it that the text of I am Smoke/Female is shown on the second page of this exhibit which is Bates stamped ADA 456.

A. Yes.

Q. Just referring to the English translation, the secondhand smoke component then is reflected in the first --

(Brief interruption.)

BY MR. LERNER:

Q. The sentence that refers to secondhand smoke is the, reads:

"I attack your friends, your parents, your children, your loved ones. I have no pity. I am dangerous. I am cigarette smoke."

Is that correct?

A. Yes.

Q. Is the sentence in the last paragraph of the translation, I destroy homes, also used to -- reflect a secondhand smoke element?

A. Yes.

Q. What sentence is in the I am Smoke/Male

referred to, you can refer to the translation, refer to the dangers of secondhand smoke or otherwise refer to secondhand smoke?

A. It appears that this paragraph, "I am everywhere, in homes, offices, parks, parties."

Q. I am even in schools?

A. And in schools.

Q. How about the last sentence of the second paragraph?

"I stalk my victims: Youth, people in full development, old people, even those that are not born yet."

Is that also a reference to secondhand smoke?

A. I would say yes.

Q. The memo that -- cover memo states that:

"Beginning the week of May 31 we are scheduled to begin our first flight of radio in Los Angeles, San Francisco, San Diego, Fresno and Sacramento."

I take it you are recommending here that the Tobacco Control Section approve running I am Smoke/Female and I am Smoke/Male in those markets at that time?

A. Yes.

Q. Did you receive approval to begin running these radio spots at the end of May?

A. Yes.

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Q. Did they, in fact, begin to run at that time?
A. I believe so, yes.
(Deposition Exhibit 236 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 236 appears to be a collection of documents that pertain to broadcast buy authorization, Hispanic. I realize it's a group of -- potentially a group of documents, but I would ask you to try to explain, you know, what each document is, and what they generally show. I don't want to get into any detail. I want to understand what is this I am looking at.
A. I understand. These appear to be media authorizations from the planner to the buyers on the amount of -- that should be bought -- the amount of media that should be bought within a given flight and that's labeled under broadcast buy authorization, Hispanic.
The grid charts -- the pages subsequent to that -- those cover pages are the number of points that can be bought within that budget figure and the -- that's points and then the cost of a point is the amount of dollar per point that could be bought. So it breaks it down according to the budget.
The grid charts that appear to be like Excel sheets, are traffic instructions and those are

listed as -- from ADA 900.
Q. Is that an example?
A. Yes. That is a traffic instruction of broadcast traffic advisory which enables the traffic person to send the tape -- the commercial to that station within that market period to air given that period of time.
Q. So, for example, if we use the traffic advisory form which is ADA 900, this shows a buy at KDTV in San Francisco from the first three weeks of November 1999?
A. Um-hum.
Q. And it's a 30-second spot?
A. Um-hum.
Q. It just says anti-smoking?
A. Yes.
Q. Do you know which spot that would have been from this document?
A. I can't recall exactly which spot it was.
Q. How does one determine which spot played at KDTV during that three-week period?
A. It's whatever spot was authorized to air.
Q. Is there -- can you tell from anything in this exhibit which spot was authorized to air, or I should say which spot or spots was authorized to air?
A. No, I can't. I believe it was Gravesite and Quiere Dejar de Fumar, which is, "Quitting takes practice" in English.

Q. Is that based on your recollection or something in this exhibit that you can refer to?

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A. I believe -- it's my recollection.
Q. So this exhibit does not contain the actual rotations that were broadcast, I take it.
A. No.
Q. And does this exhibit in fact show the buys that were authorized during 1999?
A. I believe so.
Q. Are there any periods of time that are not covered -- any periods of time which are not covered by this exhibit during 1999 when buys were being made?
A. I don't believe so.
Q. If I could just start at the back for a minute, just to clarify that. I see that the broadcast traffic advisory forms that began at page Bates numbered ADA 993 cover dates in August 1999. Is that correct?
A. Um-hum. Yes.
Q. And I see that there are also forms that cover dates in September and October, July and references in other documents to dates in October and November.
A. Um-hum.
Q. I don't see any dates in June. Do you happen to know whether there were any buys made in June 1999?
A. I can't recall.

Q. Are there other documents that reflect media buys by Ad Americas?
MS. BUTNICK: Can I just point out there are some?
MR. LERNER: Excuse me. Which page was that?
MS. BUTNICK: It's sort of the teen range of the 900, say 917. I'm sorry, not 917. After that. 925.
MR. LERNER: I see. Here -- I see Page 921, the refers to May 31 to 6-20 in L.A. and Riverside. 922 refers to May 31 to June 20 in San Francisco. I see. 923 is San Diego and 924 to Fresno.
Q. Are those the pages that would reflect the media buys in those markets for May and June?
A. Yes.
Q. And I see Stockton/Modesto was the next page, ADA 925. Is that correct?
A. Yes.
Q. Are there any other documents that you are aware of that reflect specific media buys during 1999 other than that are in included in Exhibit 236?
A. Yes. I believe so. Yes.
Q. What other documents would that be?
A. The plans, the flow chart, media flow chart. And the summary, the Y2K summary.
MR. LERNER: Let's go off the record, please.
(Discussion off the record.)
(Deposition Exhibit 237 and 238

were marked for identification.)
BY MR. LERNER:
Q. You just referred to media flow charts. Is that the document that's shown at the pages Bates stamped ADA 301 and ADA 302 of Exhibit 237?

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A. Yes.
Q. This document is dated December 15, 1999. Is that correct?
A. Yes.
Q. What does it show?
A. This shows the media activity throughout the year, 1999, planned.
Q. Does it show the media activity through November 1999?
A. Yes.
Q. Is there any media activity in 1999 that's not reflected on this flow chart?
A. No.
Q. Was this document presented to the California Department of Health Services?
A. This -- yes.
Q. Is this, basically, a final summary of the media buys during 1999 that were arranged by Ad Americas?
A. Yes.
Q. Does this chart reflect any bonus time that may have been obtained?
A. No.

Q. Is there a document that reflects the bonus time that was obtained by Ad Americas as part of its media buys?
A. Not that I can recall.
Q. Did Ad Americas keep any records as to the amount of bonus time that was obtained as part of its media buys?
A. Not that I can recall, no.
Q. Are you aware that bonus time was obtained as part of the media buys by Ad Americas?
A. Yes.
Q. Do you have any way of estimating what that consisted of?
A. No. However, generally speaking, we -- without speculating, I can't -- I can't -- I couldn't answer that question.
Q. Just like to help get an explanation from you of what this -- what is depicted by this flow chart. So if we could take the entry for Los Angeles under spot TV, and then there is a first line that says 18A -- I am sorry, A18 to 34, I guess RTG means rating?
A. Yes.
Q. So that would be the number of rating points purchased?
A. Yes.
Q. And for the age 18 to 34 age group?
A. Yes.

Q. And if you go down to the right-hand column -- I mean down to the right under April, during the week of April 19 and April 26 there were 60 rating points purchased in the age 18 to 34 age group during each of those weeks?
A. Approximate points, yes.
Q. In the Los Angeles market.
A. Yes.

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Q. And then the teens -- for teens -- I guess the next line down is for teens. I take it that during the weeks of April 19 and April 26 approximately 35 rating points were purchased each week in the teen market in Los Angeles.
A. Yes.
Q. Going all the way to the far right-hand column, where it says gross, total cost, what does that mean?
A. That is the budget that -- that's the cost of the media given for TV for L.A. That first number there would be the cost of the media.
Q. So the number $643,305 was the total cost of the media buys in the Los Angeles market for spot TV?
A. Yes.
Q. During 1999?
A. That was what was -- yes. That was the way we had planned it out.
Q. Was that amount of money, in fact, spent?

A. It may have varied slightly.
Q. But this was the plan?
A. Yes.
Q. As far as you know were the number of points reflected on this flow chart in fact purchased?
A. That was the goal. Or that was -- yes. That was the goal whether it varied slightly above or below, it may have varied, depending on what the buyers purchased.
Q. But, generally, this chart does reflect the amount of points that were purchased in each category --
A. Yes.
Q. -- in each market during 1999.
A. Yes.
Q. The gross total cost as shown on the right-hand column also reflects, generally speaking, the amount of money that was spent in each market and the total for spot TV and spot radio during 1999?
A. Approximately, yes.
Q. Going to Page 2 of the flow chart, which is Bates number ADA 0302, can you tell me what is depicted for outdoor under the Los Angeles line where it says number 25 for the week of June 28, for example.
A. Yes.
Q. What does that mean?
A. Outdoor, those are separated -- those are

the flights of outdoor showings within that given market.
Q. What does the 25 mean? 25 flights?
A. 25 showing. That's terminology for the type of post -- the size of the outdoor.
Q. So this tells you the amount of outdoor exposure?
A. Yes.
Q. Does it tell you the number of billboards, the locations?
A. Other than within the Los Angeles area or

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Los Angeles marketplace.
Q. So the number 25 refers to a measure of exposure.
A. Yes.
Q. And referring to the right-hand column, the gross total cost of the Los Angeles exposure is $112,500 for the year. Is that correct?
A. Yes.
Q. What does it refer to in the left-hand column under outdoor when it refers to eight sheets?
A. That's the particular size of that outdoor. You have 30-second TV spots. You have eight-sheet outdoor.
Q. Sacramento, it says 30 sheets. That means more exposure than eight sheets?
A. It's a bigger size.
Q. Now, the next category down, mall kiosks,

there is a reference to 22 panels. What does that mean?
A. I believe it's the number of panels within those particular marketplace, Los Angeles.
Q. What is a mall kiosk?
A. A mall kiosk is a -- similar to a poster. In fact, they are about the size of a poster. They turn -- the term "mall kiosk" refers to they are usually in the mall, like, near the directory section.
Q. And I see that for Los Angeles during the week of June 28 and then throughout the rest of that -- the period depicted, there is a number 15 assigned? What does that number 15 mean?
A. That is the number of mall kiosks within that given week. There are 15 -- there were 15 in L.A. during the week of -- throughout the whole flight, basically. And then seven in San Francisco.
Q. And those -- basically, what it means is that these mall kiosks, advertisements were put up during the week, beginning the week of June 28, and they stayed up through the week of November 8th in Los Angeles?
A. Approximately, yes.
Q. Was there any change in those advertisements during that time period?
A. They may have started the week prior or they may have gotten up late. Outdoors, typically, it's not as easy to control it as TV, due to vendors.

Q. But, basically, once the ad goes up, it stays up until it's taken down? Is that a fair interpretation?
A. Yes.
Q. And can you explain the entry for newspapers? I take it each week where there is a -- the line blackened in, it means there was a quarter page ad shown in various newspapers in that market?
A. Yes.
Q. What exactly is meant by the reference one-quarter page ad, eight insertions in the left-hand column under newspapers?
A. Quarter page ad refers to the size of the ad. Eight pertains to the number of insertion or I

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believe publications that were bought within that marketplace.
Q. So would you --
A. You refer to insertions as newspaper insertions.
Q. So would one insertion be an ad placed in the Los Angeles Times for one particular day or is it for one particular week?
A. Usually I believe -- I believe these papers were for the week.
Q. One insertion refers to an ad, a quarter-page ad running for one week in one newspaper.
A. Yes.
Q. The next page of Exhibit 237 is -- appears

to be a memo from you to Tacey Buffington dated July 20, 1999. Is that correct?
A. Yes.
Q. The documents that follow are approvals for print that were signed off by Colleen Stevens on behalf of the Tobacco Control Section. Is that correct?
A. Yes.
Q. This was authorization from Tobacco Control Section for Ad Americas to place these print media and outdoor media and other ads as shown on the estimates?
A. Yes.
Q. Excuse me. Just referring back to the memo from Tacey again, there is a sentence that reads:
"I want to thank you for the excellent media summary you compiled for us. It was very helpful and Colleen especially appreciated it."
What media summary is being referred to to your knowledge?
A. I believe it's --
Q. Is that Exhibit 238?
A. Exhibit 238.
Q. So Exhibit 238 is a media summary that you prepared for the Tobacco Control Section?
A. Yes.
Can we go off the record?

Q. Sure.
(Discussion off the record.)
BY MR. LERNER:
Q. Just off the record you were discussing -- we were discussing Exhibit 238.
A. Yes.
Q. You said that you earlier mistakenly referred to this document as a Y2K summary. Is that correct?
A. Yes.
Q. Actually what you meant was the 1999 Hispanic media summary.
A. Yes.
Q. There is also a summary for year 2000 as well, is there not?
A. No.
Q. We will get to that in a minute, then.

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Was this document prepared by you at the request of the Tobacco Control Section?
A. I can't recall.
Q. What does this document show?
A. It basically summarizes the budgets allocated, which is planned versus purchased, the creative that ran, the rotation that ran. Yes.
Q. Does this document show what was spent and what ads ran during 1999?
A. Yes.
Q. If we go to the box at the bottom under

creative which says television, 50 percent of the ads that ran were grave -- well, Gravesite was 50 percent of the television ads?
A. Yes.
Q. And with radio, 50 percent of the ads were I am Smoke/Female. Is that correct?
A. I believe so.
Q. And those -- both Gravesite and I am Smoke/Female are ads that are directed at least partially with regard to secondhand smoke. Is that right?
A. Yes.
Q. On the right-hand column it says "total media planned" and there is a dollar -- a figure $1,897,646.18. Is that the amount of media buys that was planned for 1999?
A. Yes.
Q. Under purchase there is a number $1,873,137.68. Is that the amount of media that was actually purchased during 1999?
A. Approximately. Not down to the penny, but approximately.
Q. Was there any print advertising during 1999 that pertained to secondhand smoke?
A. No.
Q. Was there any outdoor advertising during 1999 that pertained to secondhand smoke?
A. No. I don't believe so, no.

Q. Would it be fair to say that the amount spent on television advertising during 1999 was $1,051,817.50 as shown in the second line under television?
A. Approximately, yes.
Q. Would it be fair to say that half of that spending was attributable to showing the ad Gravesite?
A. Again, it would be speculating, whether the stations aired it or not. It may vary.
Q. So it was intended that the rotation include Gravesite 50 percent of the time?
A. Yes.
Q. And do you have records that show the actual airing of Gravesite or the actual airing time?
A. Not that I can recall, no.
Q. So Gravesite could have aired more or less than 50 percent of the time depending on the actual circumstances.
A. Yes.
Q. But for purposes of discussion, 50 percent

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is a good figure, do you think?
A. It was intended.
Q. Any reason to think that it was substantially more or less -- aired substantially more or less than 50 percent of the time?
A. Other than human error by the stations.
(Deposition Exhibit 239 was marked for identification.)

BY MR. LERNER:
Q. Exhibit 239 appears to be a memo to you from Cailin Cannon of Asher & Partners. Is that correct?
A. Yes.
Q. And it's dated February 14, 2000. I note that she says:
"We need to provide her," that is Tacey, "with the actual 1999 creative rotation and media spending by month for the general market as well as for the subcontractors."
Did you provide information to Cailin Cannon concerning the actual 1999 creative rotation and media spending by Ad Americas?
A. I recall that I did send her the document 238. And I believe that was sufficient.
Q. So Exhibit 238 is the -- really the best information you would have as to how much was spent and what the creative rotation was during 1999?
A. Yes.
(Deposition Exhibit 240 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 240 is a document called "Ad Americas Advertising California Department of Health Services Billed-to-Date Recap." And it covers the time period 1999 year-end close. Have you seen this

document before?
A. Yes.
Q. Are you familiar with its contents?
A. Yes.
Q. Did you prepare this document?
A. Yes.
Q. What does this document show?
A. Expenditures by media medium.
Q. When did you prepare this document?
A. I can't recall.
Q. Does this show -- does this give 1999 totals for expenditure by medium?
A. Yes.
Q. I know there is some -- under the first four lines of this document, the first five lines show the media purchases. Is that correct?
A. Yes.
Q. Estimated and actual billed to date?
A. Yes.
Q. These numbers appear to vary slightly from those that are shown on Exhibit 238.
A. Yes.
Q. Is that right? For example, the billed to

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date number here for media subtotal is $1,876,397.65, whereas the purchased total under Exhibit 238 is $1,873,137.68.
A. Yes.
Q. Is there any reason for that discrepancy

that you know of?
A. Other than probably I would be speculating, but media costs may have slightly varied during the period of time that this document was prepared and this document was prepared.
Q. Was Exhibit 240 prepared after Exhibit 238?
A. That's right.
Q. Is Exhibit 240 an internal document at Ad Americas or is it something that was used as a report to anyone outside?
A. It was a report, a summary report.
Q. Who was it prepared for?
A. It was prepared for the California Department of Health Services.
Q. Did you send this report to the California Department of Health Services?
A. Yes.
Q. When did you do that?
A. I can't recall from -- from judging what the document is saying, it was probably in December.
Q. Now this document not only shows media buys but shows the production and administrative costs?
A. Yes.
Q. So that -- I take it that the production costs during 1999 for radio, television, outdoor and print totaled $452,170.31. Is that correct?

A. I'm sorry, where --
Q. I am looking in the first column, it says estimated amount.
A. That's how much we had budgeted.
Q. The estimated amount column is the amount budgeted?
A. Yes.
Q. What is the -- that's the total amount budgeted for each of those categories?
A. Yes.
Q. Production categories?
A. Um-hum.
Q. Does this document show how much was actually spent for production during 1999?
A. At the -- in the billed to date column, in production subtotal.
Q. So the amount actually spent on production in 1999 was $436,503.25?
A. Approximately, yes.
Q. Was there any -- that was amounts that were billed to the state through December?
A. Yes.
Q. Is there any amount that was not billed to the state for production during 1999 that's not included within that $436,000 figure?
A. No. That's that number.

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Q. Now, the billed to date column also shows the amounts that were spent during 1999 on various

administrative categories, research, administrative, miscellaneous, creative miscellaneous and so on. So the total administrative expense on Ad Americas on the Department of Health Services contract in 1999 was $120,964.79?
A. Yes.
Q. Then where it says total -- what is the -- what does the item 1998 rollover $450,000 mean?
A. I believe that was the budget that was carried over from the state prior to us receiving the contract.
Q. So the total Ad Americas budget initially was $2,450,000 for 1999?
A. Actually, no. It was less than that. Plus the rollover.
Q. So it was two million plus the $450,000 rollover.
A. Yes.
Q. Then in the total under the billed to date column is $2,443,865.69.
A. Yes.
Q. Now, that number represents the total spent on the Ad Americas contract for the Department of Health Services account in 1999.
A. Yes.
Q. Is that your handwriting on the right-hand side of that document?
A. I can't recall.

(Deposition Exhibit 241 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 241 is a document called "1999 CDHS/TCS Asian American Market Media Expenditures." How did you happen to come into the possession of this document?
A. I can't recall.
Q. Did you have any discussions concerning this document with anyone at Ad Americas?
A. No.
Q. Did you have any discussions concerning this document with anyone at Asher & Partners?
A. No.
Q. Did you review this document during 1999?
A. Not that I can recall.
Q. When did you receive it?
A. I can't recall.
Q. What use did you make of this document?
A. No reason that I can recall.
Q. Do you know from whom you received this document?
A. No.
Q. Did you review this document at all during 1999?
A. Not that I can recall.
Q. Did you review it during the year 2000?
A. Not that I can recall.

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Q. Do you have any -- is there any -- did you do anything with this document at all?
A. No. Not that I can recall.
Q. Do you have an understanding of what this document is?
A. It appears to be media expenditures partly towards the Asian market broken out by month.
Q. Is this an actual expenditure? Does this document show actual expenditures to your knowledge?
A. I can't recall. Actually, I would be speculating. I don't know.
Q. Did you have any discussions with anyone at Asher & Partners concerning the budgets for other minority subcontractors on the California Department of Health Services account?
A. Can you be more specific?
Q. Have you ever discussed with anyone at Asher & Partners the budgets for other minority subcontractors?
A. Yes.
Q. With whom did you have those conversations?
A. I believe it was with -- actually, I can't recall who it was. I think Chris Steele.
Q. Did you ever hear anyone express any concern or did you ever express any concern that the budgets for Ad Americas work on the California Department of Health Services contract was not large

enough relative to the budgets of other minority subcontractors?
MS. BUTNICK: Objection. Compound.
THE WITNESS: I don't understand the question.
BY MR. LERNER:
Q. Did you ever have any conversations with anyone at Asher concerning the budgets of other minority subcontractors?
A. Yes.
Q. What can you recall about those discussions?
A. I can't recall the exact discussion, but I believe it was that we were told that we were the largest subcontractor.
Can we take a break?
Q. Sure.
(Recess taken.)
(Deposition Exhibit 242 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 242 appears to be a collection of helpline statistics that you received from Judi Mills of California Smokers Helpline. Is that correct?
A. Yes.
Q. How did you make use of these reports in your work as account executive for the California Department of Health Services Tobacco Control Section account?

A. As indicator of what -- how many calls were generated from the smokers helpline.

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Q. How did you use that information in your work?
A. I -- it hasn't -- a report or anything, analysis, has not been complete on this.
Q. Is there some analysis of this that is being done to your knowledge?
A. No.
Q. So have you made any use of this at all?
A. No.
Q. Do you review these statistics when you receive them?
A. I do look over them and find -- see what calls have been generated on the Hispanic line or from Hispanic ads as is in each of the reports.
Q. Where is that shown? For example, on the report for February 2000 what begins at the page Bates numbered ADA 1098?
A. Pardon me? What was the question?
Q. Well, does this show you how many calls were generated by Hispanics or ads directed at the Hispanic population?
A. No. It provides -- no.
Q. This just provides you with the number of calls that were made by Hispanic or Latin American persons to the smokers helpline?
A. Yes.

Q. It doesn't tell you anything specific about how many calls by those people were inspired by advertising directly in that community?
A. No. No.
Q. So this is just general information you took into account in trying to do your work as an account executive?
A. Yes. They provided this to us as a courtesy.
(Deposition Exhibit 243 and 244 were marked for identification.)
BY MR. LERNER:
Q. Earlier we were discussing the June meeting of the Hispanic Latino Tobacco Education Network in Laguna Niguel.
A. Yes.
Q. I went back and located a couple of other documents that appear to pertain to that meeting.
Exhibit 243 appears to contain an agenda for the meeting. Is that correct?
A. Yes.
Q. You appeared with Mr. Ogradon and Mr. Sosa at the meeting on behalf of Ad Americas?
A. Yes.
Q. Exhibit 244 appears to be the agenda for the Ad Americas portion of the meeting in particular. Is that correct?
A. Yes.

Q. It appears that Mr. Sosa made the presentation of the creative part of the agenda?
A. Yes.
Q. Was this Ad Americas portion of the agenda approved by Tacey Buffington in advance?

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A. I don't recall if it was.
Q. With regard to the Wave II and Wave III creative that are identified in Mr. Sosa's portion of the agenda, which of those items pertains to ETS?
A. I believe Faces, Be a Good Dad, What Do You Share With Your Family, Smoking Destroys Families, Birthday, Grandma. Other than that, I don't recall.
Q. I see after Mr. Sosa spoke there were remarks by Tacey Buffington concerning the status of the approval process?
A. Yes.
Q. Were you present for her remarks on that subject?
A. I don't believe it occurred due to time.
Q. Did you and Mr. Ogradon present at this June 30th meeting?
A. Yes.
Q. Did Mr. Sosa present as shown in the agenda?
A. Yes.
Q. Were the storyboards for the Wave II TV shown to the group?
A. I can't recall.

Q. Was Mr. Sosa's presentation a verbal presentation on his part without any visual aids?
A. They -- I believe that he spoke about these as items in the works.
Q. Did he use any visual aids as part of his presentation?
A. I can't recall. I can't recall if he did or didn't.
(Deposition Exhibit 245 was marked for identification.)
BY MR. LERNER:
Q. Can you identify Exhibit 245.
A. It appears to be a summary of rotation of ads that ran in 1999.
Q. Was this document prepared by someone at Ad Americas?
A. I can't recall if it was.
Q. This document, basically, has the same information then as shown on the rotation -- the same rotation information as is shown at the bottom of Exhibit 238. Is that correct?
A. 238? Yes.
(Deposition Exhibit 246 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 246 is a document called "Print Schedule." Can you identify what this document shows?
A. I believe it is the summary of print

insertions planned for the print ads in 1999.
Q. Is this a plan or is it -- does it show what actually occurred?
A. I believe it was -- this is a plan.
Q. So if I understand this correctly, this shows the publications in which print ads were planned to be inserted in the various markets that are described.

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A. Yes.
Q. Is there a report that shows the publications and the dates on which ads were actually placed during 1999?
A. This document does.
Q. This document does?
A. Yes. These are -- it lists the publications on the left-hand side and on the top pages, the dates there, those are the weeks that these ads were scheduled to run.
Q. Do you know whether the ads in fact ran as shown in this document?
A. Again, this was the plan and with the number of insertions, so possibly, again -- without or due to human error, it may have been a day late or gone to the next week or so, but this is the way -- it's laid out or scheduled to run.
Q. Earlier you identified the approvals from placement of the print ads you received from Colleen Stevens. Is that right? Do you remember that?

A. The estimates?
Q. The estimates. And those estimates would have related to the placement of the print ads that are shown on this document?
A. Yes.
Q. Did you ever hear that any of the planned ads did not run as contemplated?
A. I can't recall.
Q. You didn't hear any --
A. If I did, you know, if I didn't and it was in error or something like that, I didn't hear about it.
Q. So you have no reason to think that this plan did not actually get executed generally according to the -- what is set forth here.
A. Yes.
(Deposition Exhibit 247 was marked for identification.)
BY MR. LERNER:
Q. Exhibit 247 is a memo from you to Tacey Buffington dated March 29, 1999 which enclosed some sample copies of print and outdoor creative that CIGNA has forwarded to Ad Americas. What are the -- what is your understanding of what these exhibits -- the documents attached to your memo consist of? This is a memo you wrote to Tacey Buffington, I take it.
A. Yes.
Q. What was your purpose in sending it to

her?
A. I can't recall exactly.
Q. Did you make any -- what use did you make of the sample copies of print and outdoor ads that are attached to the memo?
A. I'm sorry, what --
Q. What use did you make of the sample advertisements that are attached to the memo?
A. Simply to forward them copies of these ads, to Tacey.
Q. Did you understand that these were ads

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that had previously been run, directed at the Hispanic population?
A. No. Not necessarily.
Q. What was your understanding of what you were sending to her?
A. Is that these are alternatives, alternative ads that exist.
Q. So this was part of what you were discussing with Ms. Buffington in connection with the development of new creative?
A. I wouldn't say new creative. I would just say these are ads that existed and we had copies of them.
MR. LERNER: Off the record a second.
(Discussion off the record.)
MR. LERNER: One of the documents produced by Ad Americas in response to the subpoena was a

videotape called "Ad Americas 1999 Hispanic TV Radio."
Q. Was this -- did you direct the preparation of this videotape?
A. Yes.
Q. And did -- was it prepared by Ad Americas?
A. The tape?
Q. Yes.
A. Yes.
Q. And what is the -- what did you ask to be put onto the tape for the -- to respond to the subpoena?
A. Those ads that ran in 1999.
Q. Are these all -- are these -- did you ask for ads that pertained to ETS or all ads?
A. All ads.
Q. So these are all the Hispanic ads that -- I should say TV and radio ads that were run by Ad Americas during 1999?
A. Yes.
Q. And they included Gravesite, Quiere Dejar de Fumar?
A. That's an attempt.
Q. Thank you.
A. On the record.
Q. I haven't had any Spanish since 7th grade, so.
I am Smoke/Female, and Helpline Female?
A. Yes.

Q. I am going to -- we will just play these and ask you to identify them as the ads that ran during 1999.
A. Yes.
(At this point the videotape was played.)
(Deposition Exhibit 248 was marked for identification.)
MR. LERNER: We have marked the tape that just -- that we just played as Exhibit 248.
Q. Does that tape, then, contain true copies of the ads that ran by -- that were run by Ad Americas during 1999?
A. The TV and radio ads, yes.
(Deposition Exhibit 249 was marked

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for identification.)
BY MR. LERNER:
Q. Can you identify Exhibit 249, which is a memo from Raquel Tomasino?
A. Yes. It's a memo from Raquel Tomasino to Tacey Buffington.
Q. This memo discusses the strategy for placement of radio ads by Ad Americas. Is that correct?
A. Media strategy, yes.
Q. And this strategy -- the media strategy that was pursued by Ad Americas with regard to radio represented a change from the strategy that was pursued by Valdes Zacky Associates. Is that correct?

A. Yes. It appears so.
Q. As far as you know as the account executive, does this memo accurately reflect the differences in radio ad placement strategy or radio strategy between Ad Americas and that pursued by Valdes Zacky?
A. Yes.
Q. To your knowledge was any -- have any surveys been taken or polls been taken that show the actual ratings for the ads, TV and radio, placed by Ad Americas?
A. Actual ratings?
Q. Yes. Is there any ratings information for the ads?
A. Not that I can know it to be accurate.
Q. Do you know of any ratings information at all that has been obtained?
A. Just the projected ratings that are listed on the media plan that are provided.
Q. So the projected ratings were based on just a decision to buy so many media points.
A. Right. To achieve our goal of reaching X percent of the Hispanic audience.
Q. And they weren't measured -- the amount of media points were not retrospectively measured as far as you know?
A. As far as I know, no. Not that I know of.
Q. When Ad Americas took over the California

Department of Health Services account, who was the account executive that you worked with at Asher & Partners?
A. I believe it was Trevor Roth.
Q. Did you have as part of your job responsibility for communicating Mr. Roth concerning the account?
A. On certain issues until he left. He was only there for a short while while I worked on the account.
Q. Who replaced Mr. Roth?
A. Cailin Cannon.
Q. When did Cailin Cannon take over?
A. I can't recall.
(Deposition Exhibit 250 was marked for identification.)
BY MR. LERNER:

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Q. Exhibit 250 is a document called "Conference Report #4" dated October 7, 1999. And is this a document that you prepared?
A. Yes.
MR. LERNER: Let's go off the record.
(Discussion off the record.)
BY MR. LERNER:
Q. Did you attend the conference described in conference report number four?
A. Yes.
Q. The other persons who attended are shown

on the memo?
A. That I can recall, yes.
Q. What was the general subject of this meeting or the meeting described in conference report number four?
A. I believe it was to examine the different creative reels of potential production companies.
Q. By that you mean sample advertisements of potential production companies that might produce Wave II scripts?
A. Yes.
Q. So this is basically the production planning part of the task of determining -- of getting the Wave II script produced?
A. Yes. It's all part of the process.
Q. Was there any particular discussion at this meeting of environmental tobacco smoke ads or was this more just directed at figuring out who was going to do the work?
A. Yes. Production. It's strictly production.
(Deposition Exhibit 251 was marked for identification.)
BY MR. LERNER:
Q. Can you please identify Exhibit 251.
A. This appears to be a 2000 media summary.
Q. So this shows total planned media purchases of $1,635,534 for the year 2000?

A. Again, it's the plan, what was planned.
Q. Was this plan approved by the California Department of Health Services?
A. No.
Q. Is there any plan for the year 2000 that has been approved by the California Department of Health Services?
A. Not as of yet, no.
Q. Is there a subsequent version of this year 2000 Hispanic media summary? That is a version since February 1, 2000.
A. Not that I can recall.
Q. Has a plan for the year -- has a media plan for the year 2000 been proposed?
A. Can I discuss it with --
Q. Sure.
(The witness and counsel confer.)
THE WITNESS: Right now we are in the process of developing a plan and approving it.
BY MR. LERNER:

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Q. But has one been drafted and submitted to the California Department of Health Services?
A. Not as of yet.
MR. LERNER: Off the record.
(Discussion off the record.)
(Deposition Exhibit 252 was marked for identification.)
BY MR. LERNER:

Q. Exhibit 252 appears to be another copy of the 1999 media-plan flow chart. I see at the top right-hand corner it bears a date 2-16-2000.
(Discussion off the record.)
BY MR. LERNER:
Q. Is this document changed in any way from the Exhibit 3 chart that's part of Exhibit 237?
A. Not that I can recall. Usually when you print out a document in Excel, it will provide the date of that current date, so this must have been printed out on that day and it gets labeled that date on Excel.
Q. There is a third page to this flow chart which is called "Revised Plan B" that appears to be different than the spot TV and spot radio. That refers to spot TV and spot radio, but it appears to be different than the first page, which also refers to spot TV and spot radio. Do you know what the differences are between this -- what this revised plan B is referring to?
A. It was -- appears to be one of the alternative plans that was presented in -- at the beginning of 1999, the difference being that the radio flights in -- beginning October -- beginning the week of September 27 on through December is consistent without any break and in the plan on the first page, the radio flights remain broken into two two-week flights.

Q. Which was the plan that was actually executed during 1999? Was it the one shown on the first page?
A. Yes. I believe it was the top page.
(Deposition Exhibit 253 was marked for identification.)
BY MR. LERNER:
Q. Can you please identify Exhibit 253.
A. It appears to be a memo to Tacey Buffington and Tanya Houseman regarding the Wave II Spanish creative.
Q. And the Wave II Spanish creative is -- in your memo you refer to copies of English and Spanish versions of Rebel, Faces and Be a Good Dad as 30-second TV spots on Beta tape and one-half inch video cassette.
A. Yes.
Q. Does that reflect that those English and Spanish versions were in fact produced prior to December 21, 1999?
A. Yes.
Q. Who was selected to do the production for those ads?

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A. No Guns Pictures.
Q. That's Mr. Fernando Vallejo's company?
A. Yes.
Q. And Mr. Vallejo's selection was made at the meeting on October 7, 1999?

A. I don't recall if it was made -- the decision was made at that exact meeting, that conference.
Q. At Page 2 of Exhibit 250, this is the report on that conference, the first sentence of the second paragraph reads, "Client agreed with agency recommendation of No Guns Pictures and Fernando Vallejo as the director."
A. Yes.
Q. Does that refresh your recollection --
A. Yes.
Q. -- the selection was determined at that time?
A. Yes.
Q. And between the October 7, 1999 meeting and your December 21, 1999 memo, those spots were produced by Mr. Vallejo's company?
A. Yes.
Q. The development of scripts for the Wave II creative was begun in the spring of 1999. Is that correct?
A. I can't recall exactly what creative was -- might have been February or March.
Q. But that was work done by Ad Americas during 1999. Is that right?
A. Yes.
(Deposition Exhibits 254 and 255 were marked for identification.)

BY MR. LERNER:
Q. Exhibit 254 -- is Exhibit 254 a memo to you from Tacey Buffington dated May 8, 1999?
A. Yes.
MS. BUTNICK: May 20?
MR. LERNER: I'm sorry, May 20, 1999.
Q. The memo says, "Enclosed are the final scripts going forward for approval for Be a Good Dad, Faces, et cetera."
What did you understand was meant by the final scripts going forward for approval?
A. That these are the ads that will -- most likely going to move forward in this step, in the process of getting approval to be produced. That these ads are going up for approval.
Q. And the ads that dealt with secondhand smoke including Be a Good Dad. Is that right?
A. Be a Good Dad, yes.
Q. And also Faces?
A. Yes.
Q. Are the scripts that are shown in this document for Be a Good Dad and Faces the final scripts that were used for production of those ads?
A. I believe so. Yes, I believe so.
Q. Can you identify Exhibit 255, please.
A. They appear to be a letter, a memo from

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Tacey to me regarding the ad analysis that were coming in scripts.

Q. Did you prepare the ad analysis that's attached to the cover memo in Exhibit 255?
A. No.
Q. Were these prepared by Tacey?
A. I don't know.
Q. Were they prepared by someone at the California Department of Health Services as far as you know?
A. I don't know. I would be speculating.
Q. Did you review these descriptions of -- these ad analyses at the time you received them?
A. Yes, I did.
Q. Did you disagree with any of the contents of these analyses?
A. I don't recall.
(Deposition Exhibit 256 was marked for identification.)
BY MR. LERNER:
Q. Can you identify Exhibit 256, please.
A. It appears to be creative, radio and outdoor.
Q. Is this creative for Wave III?
A. Yes.
Q. Did Wave III consist of any ads other than radio and outdoor? I should say, does it consist of any ads other than radio and outdoor?
A. Not that I can recall.
Q. So Wave II was TV spots?

A. Yes.
Q. And Wave III is radio and outdoor?
A. Yes.
Q. Do any of the radio and outdoor ads concern secondhand smoke?
A. Yes.
Q. Which of the ads in Wave III concern secondhand smoke?
A. Grandma, Birthday, Confession, Smoking Destroys Families, What Do You Share With Your Family.
Q. As you were describing -- as you were naming the ads that dealt with secondhand smoke, you were looking at the scripts for those ads in Exhibit 256. Is that correct?
A. Yes.
Q. And are the scripts for those ads in 256 the final scripts?
A. No.
Q. Were the scripts further revised after July 7, 1999?
A. I don't believe so. These are concepts.
Q. Were any of those ads, Wave III ads, subsequently produced?
A. No.
(Deposition Exhibits 256 through 259 were marked for identification.)
BY MR. LERNER:
Q. Among the ads you just identified from

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Exhibit 256 were Confession, Birthday and Grandma. That is ads a -- among the ads aimed at environmental tobacco smoke. Is that correct?

A. Confession, Birthday and Grandma, yes.

Q. Can you identify Exhibit 257, please, which is a document entitled "Wave III Advertising Analysis" and "Confession."

A. They appear to be an ad analysis accompanied with a substantiation page along with the script.

Q. Now, is this a document that was prepared by -- that is the first page, the advertising analysis -- prepared by Asher -- by Ad Americas?

A. No.

Q. Who prepared the first page, the advertising analysis?

A. I can't recall. I don't know.

Q. Was that prepared by the California Department of Health Services?

A. I believe so.

Q. Do you have an understanding of what the purpose of this document is?

A. Providing a background of each of the scripts.

Q. Do you know who the intended audience of Exhibit 257 was?

A. No.

Q. Did you have any discussions concerning

this advertising analysis with anyone from California Department of Health Services?

A. No.

Q. Do you know whether this document was circulated to anyone outside the California Department of Health Services and Ad Americas?

A. I don't know.

Q. How did this document come to be in your files?

A. It was -- it was sent to us -- I don't recall how it got to us.

Q. Can you identify Exhibits 258 and 259 as -- also as advertising analyses of Birthday and Grandma that were prepared by the California Department of Health Services?

A. Yes. The Birthday and Grandma.

Q. Each of these advertising analyses, that is Exhibits 257, 258 and 259, states under testing research, "This concept is currently being tested." Do you have an understanding of what is meant by "This concept is currently being tested"?

A. No, I don't. I didn't prepare this document.

(Deposition Exhibit 260 was marked for identification.)

BY MR. LERNER:

Q. I just want to -- my understanding is that there was -- at some point a decision was made to

begin work on the Wave III creative. Can you identify Exhibit 260?

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A. These appear to -- appears to be an internal document from myself to Robert regarding -- regarding developing new creative.
Q. This memo reflects that the work on the new Wave III created was presented to Asher & Partners in late May 1999?
A. I'm sorry?
Q. Does this memo refresh your recollection that the Wave III creative was presented to Asher & Partners in late May 1999?
A. I don't recall if there was -- if it was ever presented to Asher & Partners, if that meeting ever took place.
Q. The middle paragraph reflects that the following TV concepts have been forwarded to the Governor's office. That includes Faces and Be a Good Dad which you previously identified as having some -- as pertaining to secondhand smoke.
A. Yes.
Q. As of today as far as you know the Governor's office has not approved those TV concepts?
A. Approval of those TV concepts to air them.
(Deposition Exhibit 261 was marked for identification.)
BY MR. LERNER:
Q. Can you identify Exhibit 261, please.

A. It appears to be an e-mail from Tacey Buffington to Santiago Ogradon.
Q. Is this e-mail that you received on or about March 1, 1999 from Tacey?
A. It appears to be that's when the e-mail was written. I don't recall when I got a copy of it.
Q. When the California Department of Health Services account came up for review, is it your understanding that the Hispanic subcontractor on the account was Valdes Zacky?
A. Yes.
Q. And did you receive or review of any Valdes Zacky's work in connection with your own work as an account executive on this account?
A. Other than just reviewing what had been -- what has -- what had been produced by them.
Q. Did you receive copies of their work to review?
A. We received some -- we received some copies, yes.
Q. Have you produced copies of those materials in response to our subpoena?
A. Yes. The Quiere Dejar de Fumar -- I'm sorry, the Gravesite spot that they had produced.
Q. And that was the spot that ran in 1999.
A. Yes.
Q. The spot that was produced that ran in 1999, that was produced by Ad Americas, was I am

Smoke/Female. That pertained to ETS.
A. That, I don't know who produced that. That ad was already produced when we had acquired the account.
Q. So none of the creative that has been done

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by Ad Americas has yet been run. Is that correct?
A. Exactly. Yes.
MR. LERNER: That's all I have. Thank you very much.
THE WITNESS: That's it?

(At the hour of 5:16 P.M., the deposition was adjourned.)

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 2000, at _____, California.

_____
W I T N E S S

I, JARDENE L. PLATT, RPR, CSR No. 3724 in and for the State of California, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify as to the truth, the whole truth, and nothing but the truth;

That said deposition was taken before me at the time and place therein set forth and was taken down by

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me stenographically and thereafter transcribed via computer-aided transcription under my direction;

I further certify that I am neither counsel for, nor related to, any party to said action, nor interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of May, 2000.

_____

JARDENE L. PLATT, RPR, CSR No. 3724

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